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Wednesday
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WASHINGTON, DC

WHEN: October 17 at 9:00 am and 1:30 pm
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ATLANTA, GA

WHEN: September 20 at 9:00 am
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1600 Clifton Rd., NE.
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Contents

Federal Register

Vol. 60, No. 177

Wednesday, September 13, 1995

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 60, No. 177
Wednesday, September 13, 1995

FARM CREDIT ADMINISTRATION

5 CFR Part 4101

12 CFR Part 601

RIN 3052–AB50, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Farm Credit Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) Board adopts as final an interim rule which supplements the Standards of Ethical Conduct for Employees of the Executive Branch (Executive Branch-wide Standards) issued by the Office of Government Ethics (OGE). The final rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to FCA programs and operations. The final rule also repeals the FCA's current regulation on these subjects and replaces them with a single section that provides cross-references to the Executive Branch-wide Standards and financial disclosure regulations, as well as these new supplemental regulations.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Wendy R. Laguarda, Senior Attorney and Deputy Ethics Official, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4234, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On June 12, 1995, the FCA published an interim rule (60 FR 30778) and requested public comments thereon. The interim rule established regulations imposing prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; limitations on purchases of assets owned by Farm Credit System institutions, conservatorship or receivership assets, or certain assets held by the Farm Credit System Insurance Corporation; restrictions arising from the employment of relatives; a prohibition against involvement in Farm Credit System board member elections; and restrictions on outside employment and business activities. The interim rule also amended 12 CFR part 601 by removing §§ 601.100–601.102. A new § 601.100 was added to provide a cross-reference to the FCA's supplemental ethical conduct regulation, codified at 5 CFR part 4101, and the Executive Branch-wide financial disclosure and standards of ethical conduct regulations at 5 CFR parts 2634 and 2635.

The FCA received no comments on the interim rule. Accordingly, the FCA Board adopts the interim rule adding 5 CFR part 4101 and amending 12 CFR part 601 which was published at 60 FR 30778 on June 12, 1995, as a final rule without change.

List of Subjects

5 CFR Part 4101

Conflicts of interests, Government employees.

12 CFR Part 601

Conflicts of interests.

Dated: August 31, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–22610 Filed 9–12–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends Import Regulation 1, Revision 7 which governs the administration of the import licensing system for certain dairy products. A license qualifies imports of certain dairy products for entry at the in-quota tariff rates established in the Harmonized Tariff Schedule of the United States (HTS). This rule implements the Uruguay Round Agreements Market access concessions.

DATES: This interim rule will be effective upon September 13, 1995. Comments should be submitted on or before October 30, 1995 to be assured of consideration.

ADDRESSES: Comments should be sent to the Dairy Import Quota Manager, Import Policies and Programs Division, AG Box 1021, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250–1021. All comments received will be available for public inspection in room 5541–S at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Warsack, Import Programs Group, Import Policies and Programs Division, AG Box 1021, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250–1021, or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866. It has been determined to be significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Office of the Secretary is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Paperwork Reduction Act

This information collection for this interim rule was approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under OMB control number 0551–0001, expiring June 30, 1997.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778. The provisions of this interim rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The interim rule would not have retroactive effect.

Background

This interim rule amends Import Regulation 1, Revision 7 (''Revision 7''), 7 CFR Part 6, which prescribes a system for licensing importation of certain articles of dairy products which are subject to tariff-rate quotas. Importers who hold licenses issued pursuant to Revision 7 may enter these articles at the applicable lower in-quota tariff rate; importers without license may enter these articles, but are required to pay duty at the applicable higher over-quota rate.

Tariff-rate quotas for certain articles of dairy products resulted from the Uruguay Round negotiations, and have been proclaimed in the Harmonized Tariff System of the United States (''HTS''). This interim rule is authorized by sections 103 and 404 of the Uruguay Round Agreements Act, and the notes to Chapter 4 and General Note 15 of the HTS.

In the Uruguay Round negotiations, the United States agreed to liberalize access to the U.S. market for imports of certain articles of dairy products. The United States agreed to convert the prior system of absolute quotas to a system of tariff-rate quotas. The United States also committed to increase, each year over a six-year period, the quantities of those articles that would be eligible for the lower in-quota rate of duty beyond the amounts that had been permitted to enter under the prior absolute quota system. Finally, the United States agreed to allocate those increased quantities among specified supplier countries.

The United States agreed to implement these commitments as of the dates on which the various supplier countries began to implement their own Uruguay Round Agreements market access concessions. For most supplier countries, this was January 1, 1995; however, there were six countries that did not begin to implement their Uruguay Round concessions until July 1, 1995.

The Uruguay Round concessions and access commitments on dairy products have required the United States to make changes in its system for regulating imports of dairy products. Under the prior regime of absolute quotas, an importer had to obtain a license in order to import an article of dairy products subject to a quota; with very limited exceptions no imports were permitted without a license. The new tariff-rate quota system will continue to operate on the basis of licenses but with a basic difference. A tariff-rate quota is essentially a two-tiered tariff system. An importer that obtains a license may enter a specified quantity of an article at the lower, in-quota rate of duty. An importer without a license will no longer be precluded from entering an article; he or she may enter the article, but will be assessed duty at the higher over-quota rate.

USDA began to implement the post-Uruguay Round system when it published an interim rule on January 6, 1995 (60 *Fed. Reg.* 1989–1996) amending Revision 7. That interim rule added a new Appendix 3 which specified the quantities of articles of dairy products that, effective January 1, 1995, had become available for supplementary licenses during quota year 1995. The quantities specified reflected U.S. commitments to those supplier countries who had implemented their own Uruguay Round access commitments on January 1, 1995. The January 6 interim rule also established new eligibility requirements for applicants seeking licenses for non-cheese articles listed in Appendix 3, and prescribed methods for allocating such non-cheese licenses. Finally, the January 1 interim rule changed various references in the text of the rule to reflect the conversion in the U.S. tariff system from the old Tariff Schedules of the United States (''TSUS'') to the HTS.

On May 2, 1995, USDA published a second interim rule (60 FR 21425–28), again amending Revision 7 by revising Appendix 3 to reflect additional amounts of dairy products that became available, effective July 1, 1995, for supplementary licenses. These increases implemented U.S. access commitments to the six countries who had begun to implement their own access commitments effective July 1, 1995.

This interim rule again amends Appendix 3 to reflect additional quantities of cheese and cheese products that will be eligible, effective January 1, 1996, for supplementary license. These increases reflect the additional amounts of access required to fulfill the second year of the six-year commitment. This interim rule also changes, from August 1 to October 1, the first day on which an application for nonhistorical and supplementary license may be postmarked to receive consideration. Finally, it modifies the eligibility requirements for supplementary licenses for non-cheese articles by changing the time period during which entries or exports of dairy products have to occur.

Although this interim rule, like the two previous interim rules, reflects only modest adjustments in the basis operation of the dairy products import system, USDA anticipates that it will soon propose more fundamental changes to the system. On June 2, 1994, USDA published an Advance Notice of Proposed Rulemaking (59 *Fed. Reg.* 28495) seeking public comment and suggestions about ways to operate the system of dairy product importation. Subsequently, on March 10, 1995, USDA held a public hearing at which interested parties voiced their views and comments on the current system and presented their suggestions about changes or revisions to the system. Having had the benefit of these public comments, USDA plans to publish a proposed rule in the near future.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, and Imports.

Interim Rule

Accordingly, 7 CFR Part 6, Subpart—Tariff-Rate Quotas is amended as follows:

1. The authority citation is revised to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 and 4959 (19 U.S.C. 3513 and 3601).

2. Section 6.25 is amended by revising paragraph (b)(4), removing paragraph (c)(2), and redesignating paragraph (c)(3) as paragraph (c)(2) and revising redesignated paragraph (c)(2)(ii) to read as follows:

§ 6.25 Eligibility.

* * * * *

(b) * * *

(4) An application will not be approved if the submission of the evidence and certifications required to establish nonhistorical eligibility is postmarked before October 1 or later than November 1 of the year preceding the quota year for which the license is requested. If October 1 falls on a Saturday, Sunday, Federal holiday or day which is not a full workday for the United States Postal Service, applications postmarked on October 1 or any subsequent day(s) up to and including the next full workday for the United States Postal Service will be treated the same in determining priority in the issuance of licenses, in the issuance of the import licenses.

(c) * * *

(2) * * *

(ii) Providing documentary evidence that the applicant has made at least two separate commercial entries or exports of any dairy product totaling not less than 38,000 kilograms during the 12 month period ending August 1, 1995; or at least eight separate commercial entries or exports totaling not less than 18,000 kilograms, each entry or export being a minimum of 2,200 kilograms, with a minimum of two transactions taking place in each of at least three quarters of the 12 month period ending August 1, 1995.

* * * * *

3. Appendix 3 is revised to read as follows:

Appendix 3—Articles Subject to the Supplementary Licensing Provisions of Import Regulation 1, Revision 7, and Respective Annual Tariff-Rate Import Quotas for the 1996 Quota Year

Article by HTS note number	*Annual supplementary quota (kilograms)*
Butter (Note 6)	4,256,311
Dried Skim Milk (Note 7)	1,241,359
Dried Whole Milk (Note 8)	958,125
Butter Substitutes Containing over 45% by weight of butterfat and butteroil (Note 14)	4,000,500
Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat, and articles within the scope of other tariff-rate quotas provided for in this subchapter) (Note 16)	4,882,000

Appendix 3—Articles Subject to the Supplementary Licensing Provisions of Import Regulation 1, Revision 7, and Respective Annual Tariff-Rate Import Quotas for the 1996 Quota Year—Continued

Article by HTS note number	*Annual supplementary quota (kilograms)*
Australia	833,333
Austria	182,000
Costa Rica	1,550,000
Czech Republic	200,000
EC	600,000
Poland	300,000
Slovak Republic	600,000
Switzerland	166,667
Uruguay	250,000
Any Country	200,000
Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, blue-mold cheese (Note 17)	176,667
Chile	26,667
Czech Republic	50,000
EC	100,000
Cheddar cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18)	2,673,333
Australia	416,667
EC	333,333
Chile	73,333
Czech Republic	50,000
New Zealand	1,700,000
Any Country	100,000
American-type cheese, including Colby, washed curd, and granular cheese (but not including cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19)	33,333
EC	33,333
Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda Cheese (Note 20)	543,333
Argentina	110,000
Austria	133,333
EC	200,000
Czech Republic	100,000
Italian-Type cheeses, made from cow's milk (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz, and Goya not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-Type cheeses, whether or not in original loaves (Note 21)	4,540,000
Argentina	1,890,000
EC	233,333

Appendix 3—Articles Subject to the Supplementary Licensing Provisions of Import Regulation 1, Revision 7, and Respective Annual Tariff-Rate Import Quotas for the 1996 Quota Year—Continued

Article by HTS note number	*Annual supplementary quota (kilograms)*
Uruguay	750,000
Hungary	400,000
Poland .	1,100,000
Romania	166,667
Swiss and Emmenthaler cheese other than with eye formation Gruyere-process, and cheese and substitutes for cheese containing, or processed from such cheese (Note 22).	126,667
Austria	26,667
EC	100,000
Swiss and Emmenthaler cheese with eye formation (Note 25)	1,473,333
Austria	73,333
EC	233,333
Sweden	300,000
Switzerland	66,667
Czech Republic	400,000

Signed at Washington, D.C. on September 7, 1995.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 95–22817 Filed 9–11–95; 12:03 pm]

BILLING CODE 3410–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 95–22]

RIN 1557–AB14

Risk-Based Capital Requirements—Small Business Loan Obligations

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its risk-based capital standards as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994. The changes will modify the risk-based capital treatment of transfers of small business loans or leases of personal property with recourse, and are intended to facilitate such transfers.

DATES: The interim rule is effective September 13, 1995. Comments must be received on or before November 13, 1995.

ADDRESSES: Written comments should be submitted to Docket No. 95–22. Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Fax (202) 874–5274. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: David Thede, Senior Attorney, Securities and Corporate Practices Division (202/874–5210); Stephen Jackson, National Bank Examiner, (202) 874–5070, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION: The OCC is amending its risk-based capital standards for transfers of small business obligations with recourse as required by section 208 of the Riegle Community Development and Regulatory Improvement Act of 1994 (the Riegle Act), 12 U.S.C. 1835. Banks typically transfer assets with recourse as part of securitization transactions. Sections 201–210 of the Riegle Act were intended to increase small business access to capital by removing impediments in existing law to the securitization of small business loans and leases.

Under the OCC's current risk-based capital standards, assets transferred with recourse are reported on the balance sheet in regulatory reports. These amounts are thus included in the calculation of banks' risk-based capital and leverage capital ratios.

Section 208 requires the OCC, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the Federal Reserve Board (the Federal banking agencies) to change this capital treatment for transfers of small business loans and leases with recourse. Under section 208, a bank may hold capital only against the face amount of a recourse obligation (rather than the amount of the asset transferred with recourse) if the bank establishes a reserve equal to the bank's reasonable estimated liability under the recourse obligation.[1] Section 208 limits the availability of this treatment as follows:

(1) To apply section 208 to a transaction, a bank must be a ''qualified insured depository institution'' at the time of the sale with recourse. A qualified insured depository institution must be either well capitalized or, with the approval of the OCC, adequately capitalized (in either case, without regard to section 208). If an institution loses its ''qualified'' status, transactions completed while the institution was qualified will continue to receive the favorable capital treatment.

(2) The total outstanding amount of recourse retained by a bank with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the bank as described in section 208 may not exceed 15 percent of the risk-based capital of the bank, unless the OCC, by regulation or order, specifies a greater amount.

Prompt Corrective Action

Section 208(f) states that the capital of an insured depository institution shall be computed without regard to section 208 in determining whether the institution is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o). Section 1831o addresses prompt corrective action.

The caption to section 208(f), ''Prompt Corrective Action Not Affected,'' and the legislative history indicate that section 208 was not intended to affect the operation of the prompt corrective action system. See S. Rep. No. 103–169, 103d Cong., 1st Sess. 38, 69 (1993). However, the statute does not include ''well capitalized'' in the list of capital categories not affected. The prompt corrective action system deals primarily with imposing corrective sanctions on banks that are less than adequately capitalized. Therefore, allowing a bank that is adequately capitalized without the section 208 treatment[2] to use section 208 for purposes of determining whether the bank is well capitalized generally would not affect the application of the prompt corrective action sanctions to the bank. Other statutes and regulations treat a bank more favorably if it is well capitalized as defined under the prompt corrective action statute, but these provisions are not part of the prompt corrective action system of sanctions. Permitting a bank to be treated as well capitalized for purposes of these other provisions also will not affect the imposition of prompt corrective action sanctions.

There is one provision of the prompt corrective action system that could be affected by treating a bank as well capitalized rather than adequately capitalized. If the OCC determines that a bank is in an unsafe or unsound condition or is engaging in an unsafe or unsound practice, 12 U.S.C. 1831o(g) authorizes the OCC to require an adequately capitalized bank (but not a well capitalized bank) to comply with certain prompt corrective action provisions as if the bank were undercapitalized. Because the text and legislative history of section 208 indicate that it was not intended to affect prompt corrective action, the OCC believes that section 208 does not affect the capital calculation for purposes of 12 U.S.C. 1831o(g), regardless of the bank's capital level. (The OCC requests comment on this conclusion and also asks that commenters discuss the legal justification for any alternative interpretation that they suggest.)

Thus, a bank may use the capital treatment described in section 208 when determining whether it is well capitalized for purposes of prompt corrective action as well as for other regulations that reference the well capitalized capital category.[3] A bank may not use the capital treatment described in section 208 when determining whether it is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized for purposes of prompt corrective action or other regulations that directly or indirectly reference the prompt corrective action capital categories.[4] The banking agencies will disregard the capital treatment described in section 208 for purposes of 12 U.S.C. 1831o(g).

The OCC requests comments on all aspects of this interim rule.

Summary Outline

(1) Which small business obligations can an institution apply section 208 to? The answer depends on the capital level of the bank without considering section 208.

[1] For purposes of determining a bank's capital ratio, the reserve would not be subtracted from the amount of the recourse obligation.

[2] It is very unlikely but theoretically possible that a bank that is undercapitalized without section 208 would become well capitalized if it applied the treatment in section 208. Because section 208 was not intended to affect prompt corrective action, and because allowing an undercapitalized bank to become well capitalized would affect prompt corrective action, the OCC interprets section 208 not to allow an undercapitalized bank to use the capital treatment it describes to become well capitalized for purposes of prompt corrective action.

[3] An institution that is subject to a written agreement or capital directive as discussed in the OCC's prompt corrective action regulation would not be considered well capitalized.

[4] Under section 208, the capital calculation used to determine whether an institution is well capitalized differs from the calculation used to determine whether an institution is adequately capitalized. As a result, it is possible that an institution could be well capitalized using one calculation and adequately capitalized using the other. In this situation, the institution would be considered well capitalized.

(a) Bank is *well capitalized* without using section 208: bank is ''qualifying'' and can apply section 208 to any transfer of small business obligations with recourse, up to the 15% of capital limit.

(b) Bank is *adequately capitalized* without using section 208 and has *permission* from its regulator: bank is ''qualifying'' and can apply section 208 to any transfer of small business obligations with recourse, up to the 15% of capital limit.

(c) Other banks: bank is not ''qualifying'' and so cannot apply section 208 to *new* obligations. However, if the bank was qualifying in the past, it can continue to apply section 208 to obligations arising out of transfers that occurred during the time that the bank was qualified.

(2) If a bank has assets that it can apply section 208 to, for what purposes can the bank use the section 208 treatment? Again, the answer depends on the capital level of the bank without considering section 208.

Capital level	PCA, except 1831o(g)	1831o(g)	Other laws and regulations that reference PCA	Other laws and regulations that do not reference PCA
Well capitalized without using 208 [1]	Yes	N/A [2]	Yes	Yes.
Well capitalized using 208 and adequately capitalized without using 208.	Yes	No	Yes	Yes.
Other banks	No	No	No	Yes.

[1] Most banks currently fall into this category and so would be able to use section 208 for all capital calculations.
[2] If a bank is well-capitalized without using section 208, application of section 208 will not affect the status of the bank under 12 U.S.C. 1831o(g).

Regulatory Flexibility Act

It is hereby certified that this interim rule will not have a significant economic impact on a substantial number of small entities. This rulemaking is required by statute and will not affect a bank's risk-based capital for Prompt Corrective Action purposes, regardless of bank size.

Administrative Procedure Act

Section 208(g) requires that the Federal banking agencies promulgate rules implementing section 208 no later than March 22, 1995. The OCC has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be impracticable due to the time constraints imposed by section 208(g). In addition, in the OCC's view, advanced public notice and comment is unnecessary as the interim rule merely restates the statute. Further, the interim rule would permit qualifying institutions to reduce their capital levels, thereby providing these institutions with greater lending flexibility. Consequently, the added delay that would result from providing advance notice and public participation could adversely affect credit availability.

The interim rule is immediately effective upon publication in the **Federal Register**. This action is being taken pursuant to 5 U.S.C. 553(d) of the Administrative Procedure Act which permits the waiver of the 30-day delayed effective date requirement for good cause or where a rule relieves a restriction. The OCC views the limitations of time and the potential loss of benefit to affected parties during the pendency of this rulemaking as good cause to waive the 30-day delayed effective date. In addition, as the interim rule relieves a restriction, the 30-day delayed effective date may be waived. Nevertheless, the OCC desires to have the benefit of public comment before adoption of a final rule. Accordingly, the OCC invites interested persons to submit comments during a 60-day comment period. In adopting a final rule, the OCC will revise the interim rule as may be appropriate based on the comments received.

Executive Order 12866

The OCC has determined that this interim rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, the interim rule authorizes an alternative method of calculating capital that permits banks to elect to hold less capital for certain recourse obligations. Because the OCC has determined that the interim rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and Regulatory Burden

The OCC has determined that this interim rule will not increase the regulatory paperwork burden of national banks.

Section 302 of the Riegle Act requires that new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements take effect on the first day of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulation should become effective on a day other than the first day of the next quarter. The OCC believes that an immediate effective date is appropriate since the interim rule relieves a regulatory burden on qualifying banks that transfer small business obligations with recourse by significantly reducing the capital requirements on such obligations. This immediate effective date will permit qualifying institutions to reduce the amount of capital they must maintain to support the risk retained in these sales. Moreover, the OCC does not anticipate that immediate application of the rule will present a hardship to qualifying institutions in terms of compliance. Also, there is a statutory requirement for the banking agencies to promulgate final regulations implementing the provisions of section 208 by March 22, 1995. For these reasons, the OCC has determined that there is sufficient good cause to provide for an immediate effective date.

List of Subjects in 12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, appendix A to part 3 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In appendix A to part 3, section 3 is amended by adding a new paragraph (c) to read as follows:

Appendix A To Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Assets and Off-Balance Sheet Items.

* * * * *

(c) *Alternative Capital Calculation for Small Business Obligations.* (1) *Definitions.* For purposes of this section 3(c):

(i) *Qualified bank* means a bank that:

(A) Is well capitalized as defined in 12 CFR 6.4 without applying the capital treatment described in this section 3(c), or

(B) Is adequately capitalized as defined in 12 CFR 6.4 without applying the capital treatment described in this section 3(c) and has received written permission from the appropriate district office of the OCC to apply the capital treatment described in this section 3(c).

(ii) *Recourse* has the meaning given to such term under generally accepted accounting principles.

(iii) *Small business* means a business that meets the criteria for a small business concern established by the Small Business Administration in 13 CFR part 121 pursuant to 15 U.S.C. 632.

(2) *Capital and reserve requirements.* With respect to a transfer of a small business loan or a lease of personal property with recourse that is a sale under generally accepted accounting principles, a qualified bank may elect to apply the following treatment:

(i) The bank establishes and maintains a non-capital reserve under generally accepted accounting principles sufficient to meet the reasonable estimated liability of the bank under the recourse arrangement;

(ii) For purposes of calculating the bank's risk-based capital ratio, the bank includes only the amount of its retained recourse in its risk-weighted assets; and

(iii) For purposes of calculating the bank's tier 1 leverage ratio, the bank excludes from its average total consolidated assets the outstanding principal amount of the small business loans and leases transferred with recourse.

(3) *Limit on aggregate amount of recourse.* The total outstanding amount of recourse retained by a qualified bank with respect to transfers of small business loans and leases of personal property and included in the risk-weighted assets of the bank as described in section 3(c)(2) of this appendix A may not exceed 15 percent of the bank's total capital after adjustments and deductions, unless the OCC specifies a greater amount by order.

(4) *Bank that ceases to be qualified or that exceeds aggregate limit.* If a bank ceases to be a qualified bank or exceeds the aggregate limit in section 3(c)(3) of this appendix A, the bank may continue to apply the capital treatment described in section 3(c)(2) of this appendix A to transfers of small business loans and leases of personal property that occurred when the bank was qualified and did not exceed the limit.

(5) *Prompt Corrective Action not affected.* (i) A bank shall compute its capital without regard to this section 3(c) for purposes of prompt corrective action (12 U.S.C. 1831o and 12 CFR part 6) unless the bank is an adequately or well capitalized bank (without applying the capital treatment described in this section 3(c)) and, after applying the capital treatment described in this section 3(c), the bank would be well capitalized.

(ii) A bank shall compute its capital without regard to this section 3(c) for purposes of 12 U.S.C. 1831o(g) regardless of the bank's capital level.

* * * * *

Dated: August 28, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–22666 Filed 9–12–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–111; Special Conditions No. 25–ANM–106]

Special Conditions: Israel Aircraft Industries Model Galaxy Series Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for the Israel Aircraft Industries (IAI) Ltd. Model Galaxy airplane. This new airplane will have an unusual design feature associated with an unusually high operating altitude (45,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: October 13, 1995.

FOR FURTHER INFORMATION CONTACT: Timothy Dulin, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, telephone (206)227–2141.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1992, IAI Ltd., Ben-Gurion International Airport, 70100, Israel, applied for a new type certificate in the transport airplane category for the Model Galaxy airplane. The IAI Model Galaxy airplane is a derivative of the IAI Model 1125 Westwind Astra and is designed to be a long range, high speed swept low wing airplane with two aft-fuselage mounted Pratt & Whitney PW 306A engines and a conventional empennage.

The type design of the Model Galaxy contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of part 25 of the Federal Aviation Regulations (FAR). Those features include a high maximum operating altitude. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the IAI Galaxy; therefore, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, IAI Ltd. must show that the Galaxy meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–77. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Galaxy includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification, and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety

standards for the Galaxy because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under the provisions § 21.101(a)(1).

Novel or Unusual Design Feature

The IAI Galaxy will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 45,000 feet.

The FAA considers certification of transport category airplanes for operation at altitudes greater than 41,000 feet to be a novel or unusual feature because current part 25 does not contain standards to ensure the same level of safety as that provided during operation at lower altitudes. Special conditions have therefore been adopted to provide adequate standards for transport category airplanes previously approved for operation at these high altitudes, including certain Learjet models, the Boeing Model 747, Dassault-Breguet Falcon 900, Canadair Model 600, Cessna Model 650, Israel Aircraft Industries Model 1125 Westwind Astra, and Cessna Model 560. The special conditions for the Learjet Model 45 are considered the most applicable to the Galaxy and its proposed operation and are therefore use as the basis for the special conditions described below.

Damage tolerance methods are proposed to be used to ensure pressure vessel integrity while operating at the higher altitudes, in lieu of the 1/2-bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program that should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, as amended by Amendment 25–72. The maximum extent of failure and pressure vessel opening determined from the above analysis must be demonstrated to comply with the pressurization section of the proposed special conditions, which state that the cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

In order to ensure that there is adequate fresh air for crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance. Therefore, these special conditions require airplane interior temperature limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. Therefore, to prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes, or 40,000 feet for any time period. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression resulting in cabin altitudes above the 37,000-foot limit depicted in Figure 4 approaches the physiological limits of the average person; therefore every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. These special conditions therefore require pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

As discussed above, these special conditions are applicable to the IAI Model Galaxy. Should IAI Ltd. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of Proposed Special Conditions No. SC–95–4–NM for the Israel Aircraft Industries Model Galaxy Series Airplane, was published in the **Federal Register** on June 7, 1995 (60 FR 30019). No comments were received.

Conclusion

This action affects only certain design features on the IAI Ltd. Model Galaxy airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Israel Aircraft Industries, Ltd. Model Galaxy series airplanes:

Operation to 45,000 Feet

1. *Pressure Vessel Integrity.*

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to

ensure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

2. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling systems must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. the existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system, combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4(a) and 4(b) of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that IAI Ltd. must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

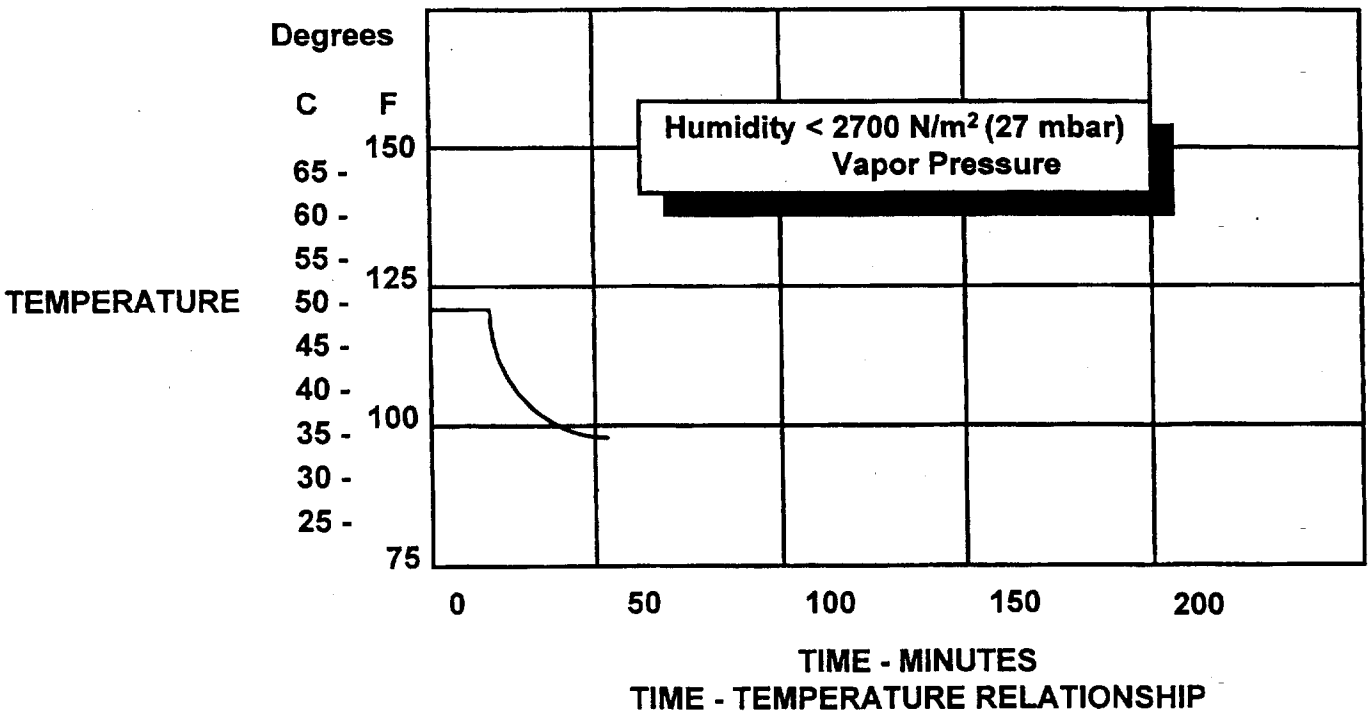
5. *Oxygen Equipment and Supply.*

(a) A continuous flow oxygen system must be provided for the passengers.

(b) A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

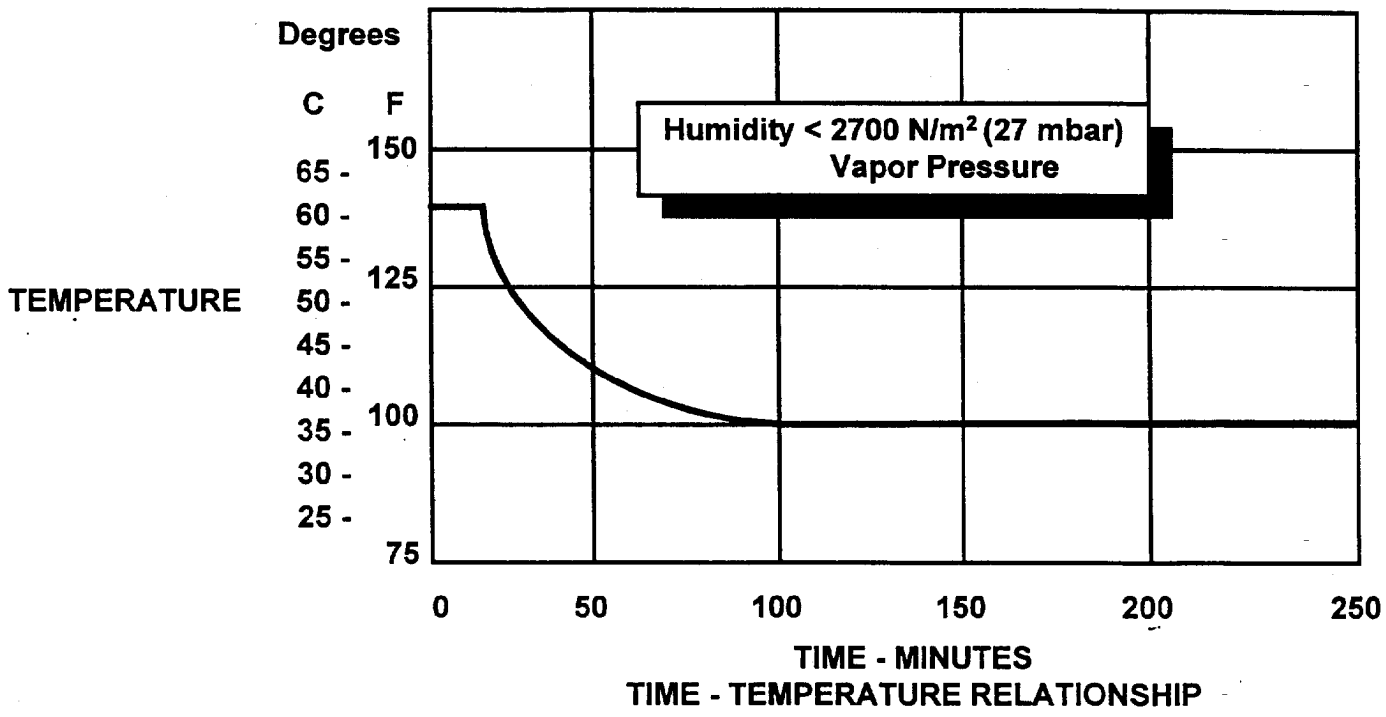
BILLING CODE 4910–13–M

Figure 1



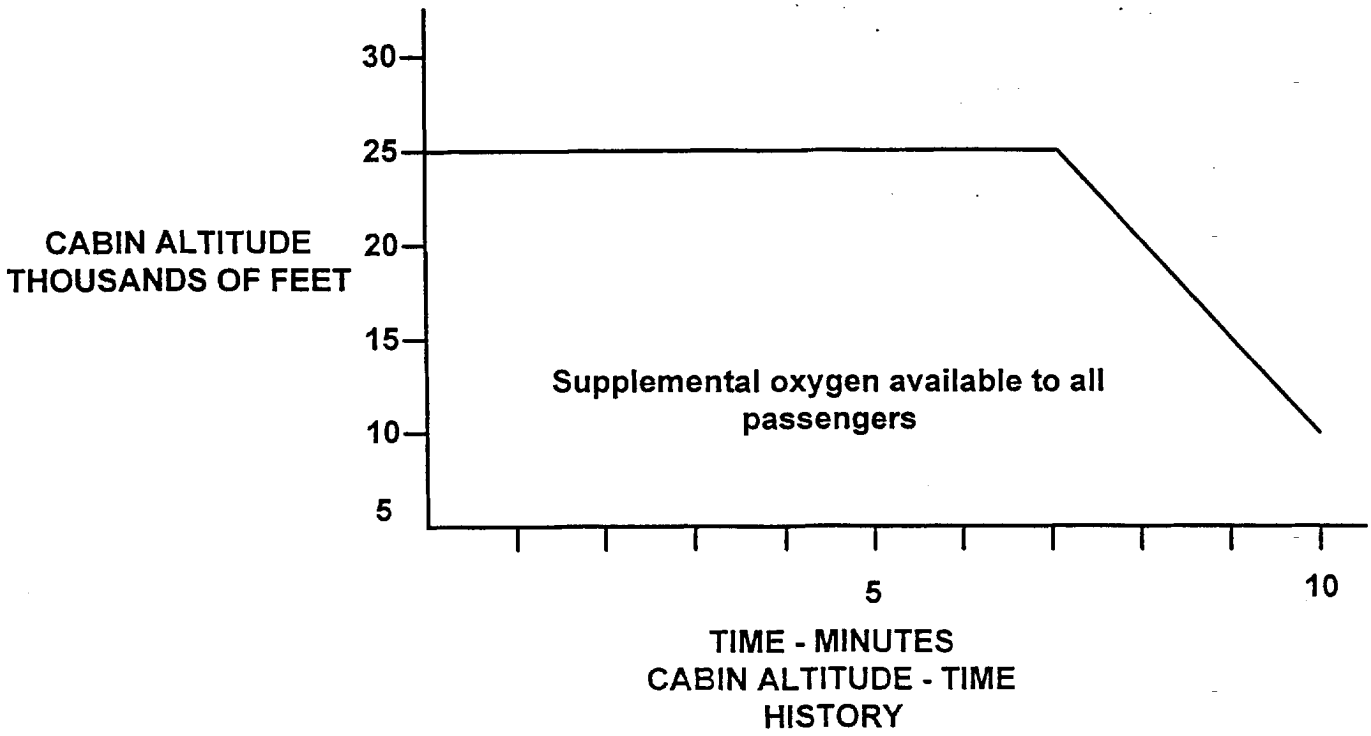
TIME - TEMPERATURE RELATIONSHIP

Figure 2



TIME - TEMPERATURE RELATIONSHIP

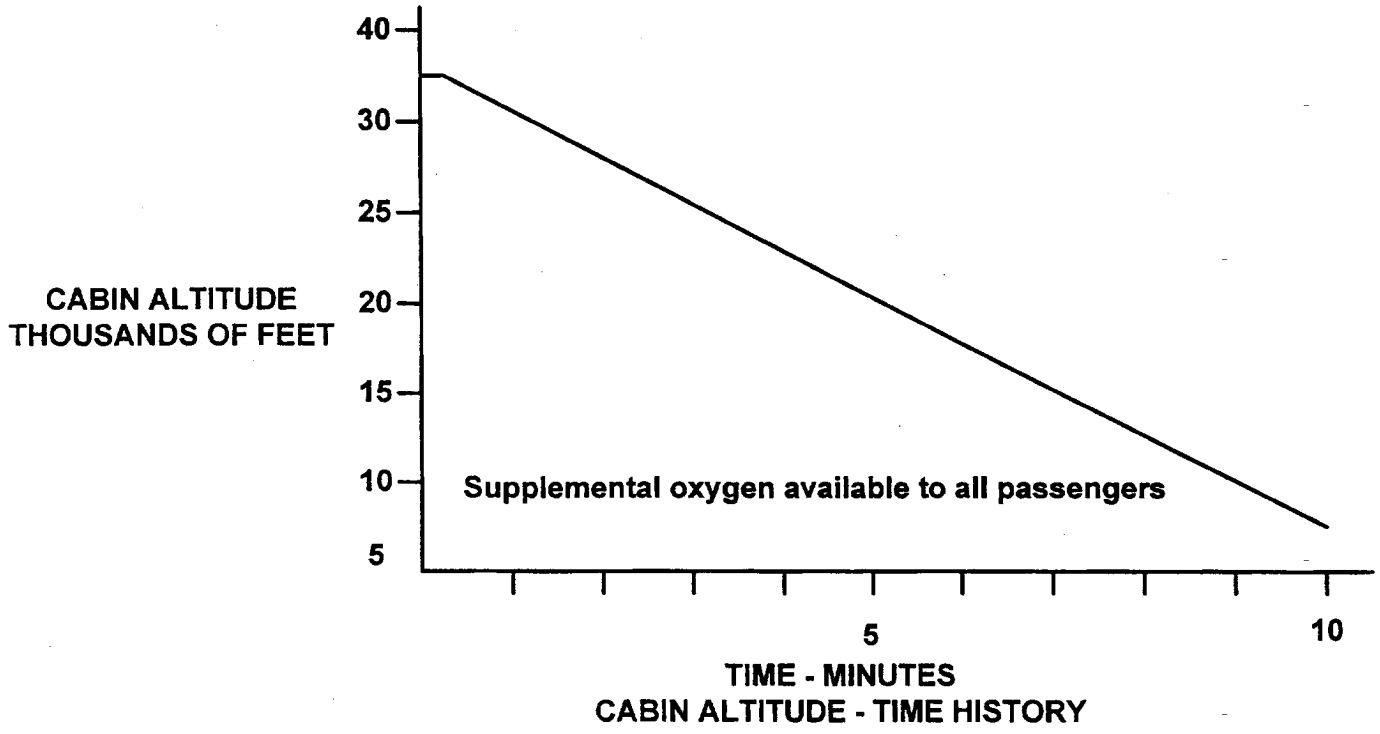
Figure 3



CABIN ALTITUDE - TIME HISTORY

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Figure 4



NOTE: For figure 4 , time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Renton, Washington, on August 31, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 95–22740 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–C

14 CFR Part 39

[Docket No. 95–NM–153–AD; Amendment 39–9366; AD 95–18–52]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T95–18–52 that was sent previously to all known U.S. owners and operators of Lockheed Model L–1011–385 airplanes by individual telegrams. This AD requires visual inspections to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers, replacement of cracked fittings, and repair of adjacent structure if found to be cracked. This amendment is prompted by reports of cracks found in these fittings. The actions specified by this AD are intended to prevent failure of these fittings due to fatigue cracking; such failure could result in rapid decompression of the airplane during flight.

DATES: Effective September 28, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–18–52, issued August 29, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before November 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7367; fax (404) 305–7348.

SUPPLEMENTARY INFORMATION: On August 29, 1995, the FAA issued telegraphic AD T95–18–51, which is applicable to Lockheed Model L–1011–385 series airplanes.

The FAA recently received a report from an operator of Lockheed Model L–1011–385 series airplanes indicating that the aft pressure bulkhead on an airplane failed while it was in flight, which resulted in rapid decompression of the airplane. This airplane had accumulated 52,010 hours time-in-service and 25,721 total flight cycles. Investigation revealed that 19 of the fittings that attach the aft pressure bulkhead to the fuselage stringers at stringers 10 through 55 were severed on this airplane. Additionally, the vertical leg of the bulkhead outer tee was cracked between these stringers. The cause of the cracking of the fittings has been attributed to fatigue.

Subsequent inspections of 15 additional airplanes in the fleet revealed cracking in the fittings of 5 of those airplanes; however, none of those fittings were severed.

Fatigue cracking, if not detected and corrected in a timely manner, could lead to failure of the fittings that attach the aft pressure bulkhead to the fuselage stringers, and subsequently could result in rapid decompression of the airplane during flight.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T95–18–52 to ensure that cracked fittings are identified and replaced in a timely manner. The AD requires a detailed visual inspection to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers at stringers 1 through 10 (on the right side of the airplane) and at stringers 64 through 56 (on the left side of the airplane). If cracking is found in any fitting, the fitting must be replaced and an additional detailed visual inspection must be performed to detect cracking in the radius at the lower end of the vertical leg of the bulkhead T-shaped frame. If cracking is found in the T-shaped frame, the cracked frame must be repaired.

Additionally, if cracking is detected in the fittings of either stringer 10 or 56, the fitting(s) in the adjacent outboard stringer(s) must be inspected until the fittings are found to be free of cracks.

The detailed visual inspections of the fittings and necessary follow-on actions are to be repeated at specified intervals.

This AD also requires that operators submit, to the FAA, a report of the findings of their inspections.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on August 29, 1995, to all known U.S. owners and operators of Lockheed Model L–1011–385 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–153–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

95–18–52 LOCKHEED: Amendment 39–9366. Docket 95–NM–153–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking which could lead to failure of the fittings that attach the aft pressure bulkhead to the fuselage stringers, and could result in rapid decompression of the airplane during flight, accomplish the following:

(a) Perform a detailed visual inspection to detect cracking of the fittings that attach the aft pressure bulkhead to the fuselage stringers (hereinafter referred to as ''fittings'') at stringers 1 through 10 (right side) and at stringers 64 through 56 (left side), at the later of the times specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles; or

(2) Within the next 25 flight cycles or 10 days after the effective date of this AD, whichever occurs earlier.

(b) If cracking is detected in the fitting at either stringer 10 or stringer 56, prior to further flight, perform a detailed visual inspection to detect cracking of the next adjacent fitting (i.e., at stringer 11 or 55). If cracking is detected in that fitting, prior to further flight, perform a detailed visual inspection to detect cracking of the next adjacent fitting (i.e., at stringer 12 or 54). If cracking is detected in that fitting, prior to further flight, continue to perform detailed visual inspections to detect cracking of the next adjacent fitting(s) until such a fitting is found to be free of cracks.

(c) If any cracked fitting is detected during the inspections required by either paragraph (a) or (b) of this AD, prior to further flight, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD.

(1) Replace the cracked fitting with a new fitting, or with a serviceable fitting on which a detailed visual inspection has been performed previously to detect cracking and has been found to be free of cracks; and

(2) Perform a detailed visual inspection to detect cracking in the radius at the lower end of the vertical leg of the bulkhead T-shaped frame between the stringer locations on either side of the stringer having the cracked fitting. If any cracked T-shaped frame is detected, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate.

(d) Repeat the inspections and other necessary actions required by paragraphs (a), (b), and (c) of this AD at intervals not to exceed 1,800 flight cycles or 3,000 flight hours, whichever occurs earlier.

(e) Within 10 days after accomplishing the initial inspections required by paragraphs (a) and (c) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7340; fax (404) 305–7348. The report must include, at a minimum, the total number of flight cycles accumulated on the airplane having the cracked fitting or cracked T-shaped frame, and identification of the location on the airplane where the cracked fitting or T-shaped frame was found, if any. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective on September 28, 1995, to all persons except those persons to whom it was made immediately effective by telegraphic AD T95–18–52, issued on August 29, 1995, which contained the requirements of this amendment.

Issued in Renton, Washington, on September 6, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22591 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

RIN 1515–AB78

19 CFR PART 12

[T.D. 95–71]

UNESCO Cultural Property Convention Signatories

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by republishing the list of signatory nations to the 1970 United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and

Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Because of the dissolution of the U.S.S.R. and other political changes in Europe, there have been many changes to the list in recent years. Rather than noting each change, Customs is publishing a new list which replaces the existing list.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Intellectual Property Rights Branch, 202–482–6960.

SUPPLEMENTARY INFORMATION:

Background

In 1983, the United States enacted the ''Convention on Cultural Property Implementation Act'' (19 U.S.C. 2601 *et seq.*) which accepted the 1970 United Nations Educational Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). As a party to the Convention, the U.S. actively participates in efforts to eliminate illicit traffic in cultural property, that is, items of importance for archaeology, prehistory, history, literature, art or science.

When a country ratifies, accepts or accedes to the Convention, Customs accords that country all rights and privileges under the Convention and adds its name to the list of signatory countries to provide the public notification of this fact.

There have been numerous additions and changes to this list in recent years with the reunification of Germany (the reunified state has not acceded to the Convention, while the former East Germany had); the dissolution of the former U.S.S.R.; and other political changes in eastern Europe. Rather than noting each change, Customs has determined to publish a new list of signatory nations which will replace the current version in the Customs Regulations.

Inapplicability of Notice and Delayed Effective Date

Because this amendment merely implements a statutory requirement and involves a matter in which a majority of the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is inappropriate.

Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

Executive Order 12866

The amendment does not meet the criteria for a ''significant regulatory action'' under E.O. 12866.

Drafting Information

The principal author of this document is Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Part 12 of the Customs Regulations (19 CFR Part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 and the relevant specific authority citation continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

§§ 12.104–12.104i also issued under 19 U.S.C. 2612.

* * * * *

2. In § 12.104b, paragraph (a) is revised to read as follows:

§ 12.104b State Parties to the Convention.

(a) The following is a list of State Parties which have deposited an instrument of ratification, acceptance, accession or succession, the date of such deposit and the date of entry into force for each State Party:

State party	Date of deposit	Date of entry into force
Algeria	June 24, 1974 (R)	Sept. 24, 1974.
Angola	Nov. 7, 1991 (R)	Feb. 7, 1992.
Argentina	Jan. 11, 1973 (R)	Apr. 11, 1973.
Armenia, Republic of	Sept. 5, 1993 (S)	See Note 1.
Australia	Oct. 30, 1989 (Ac)	Jan. 30, 1990.
Bangladesh	Dec. 9, 1987 (R)	Mar. 9, 1988.
Belarus	Apr. 28, 1988 (R)	July 28, 1988.
Belize	Jan. 26, 1990 (R)	Apr. 26, 1990.
Bolivia	Oct. 4, 1976 (R)	Jan. 4, 1977.
Bosnia-Herzegovina	July 12, 1993 (S)	See Note 2.
Brazil	Feb. 16, 1973 (R)	May 16, 1973.
Bulgaria	Sept. 15, 1971 (R)	Apr. 24, 1972.
Burkina Faso	Apr. 7, 1987 (R)	July 7, 1987.
Cambodia	Sept. 26, 1972 (R)	Dec. 26, 1972.
Cameroon	May 24, 1972 (R)	Aug. 24, 1972.
Canada	Mar. 28, 1978 (Ac)	June 28, 1978.
Central African Republic	Feb. 1, 1972 (R)	May 1, 1972.
China, People's Republic of	Nov. 28, 1989 (Ac)	Feb. 28, 1990.
Columbia	May 24, 1988 (Ac)	Aug. 24, 1988.
Cote d'Ivoire	Oct. 30, 1990 (R)	Jan. 30, 1991.
Croatia	July 6, 1992 (S)	See Note 2.
Cuba	Jan. 30, 1980 (R)	Apr. 30, 1980.
Cyprus	Oct. 19, 1979 (R)	Jan. 19, 1980.
Czech Republic	Mar. 26, 1993 (S)	See Note 4.
Dominican Republic	Mar. 7, 1973 (R)	June 7, 1973.
Ecuador	Mar. 24, 1971 (Ac)	Apr. 24, 1972.

State party	Date of deposit	Date of entry into force
Egypt	Apr. 5, 1973 (Ac)	July 5, 1973.
El Salvador	Feb. 20, 1978 (R)	May 20, 1978.
Georgia, Republic of	Nov. 4, 1992 (S)	See Note 1.
Greece	June 5, 1981 (R)	Sept. 5, 1981.
Grenada	Sept. 10, 1992 (Ac)	Dec. 10, 1992.
Guatemala	Jan. 14, 1985 (R)	Apr. 14, 1985.
Guinea	Mar. 18, 1979 (R)	June 18, 1979.
Honduras	Mar. 19, 1979 (R)	June 19, 1979.
Hungary	Oct. 23, 1978 (R)	Jan. 23, 1979.
India	Jan. 24, 1977 (R)	Apr. 24, 1977.
Iran	Jan. 27, 1975 (Ac)	Apr. 27, 1975.
Iraq	Feb. 12, 1973 (Ac)	May 12, 1973.
Italy	Oct. 2, 1978 (R)	Jan. 2, 1979.
Jordan	Mar. 15, 1974 (R)	June 15, 1974.
Korea, Democratic People's Republic of	May 13, 1983 (R)	Aug. 13, 1983.
Korea, Republic of	Feb. 14, 1983 (Ac)	May 14, 1983.
Kuwait	June 22, 1972 (Ac)	Sept. 22, 1972.
Lebanon	Aug. 25, 1992 (R)	Nov. 25, 1992.
Libya	Jan. 9, 1973 (R)	Apr. 9, 1973.
Madagascar	June 21, 1989 (R)	Sept. 21, 1989.
Mali	Apr. 6, 1987 (R)	July 6, 1987.
Mauritania	Apr. 27, 1977 (R)	July 27, 1977
Mauritius	Feb. 27, 1978 (Ac)	May 27, 1978.
Mexico	Oct. 4, 1972 (Ac)	Jan. 4, 1973.
Mongolia	June 23, 1991 (Ac)	Aug. 23, 1991.
Nepal	June 23, 1976 (R)	Sept. 23, 1976.
Nicaragua	Apr. 19, 1977 (R)	July 19, 1977.
Niger	Oct. 16, 1972 (R)	Jan. 16, 1973.
Nigeria	Jan. 24, 1972 (R)	Apr. 24, 1972.
Oman	June 2, 1978 (Ac)	Sept. 2, 1978.
Pakistan	Apr. 30, 1978 (R)	July 30, 1981.
Panama	Aug. 13, 1973 (Ac)	Nov. 13, 1973.
Peru	Oct. 24, 1979 (Ac)	Jan. 24, 1980.
Poland	Jan. 31, 1974 (R)	Apr. 30, 1974.
Portugal	Dec. 9, 1985 (R)	Mar. 9, 1986.
Qatar	Apr. 20, 1977 (Ac)	July 20, 1977.
Romania	Dec. 6, 1993 (R)	Mar. 6, 1994.
Russian Federation	Apr. 28, 1988 (R)	See Note 3.
Saudi Arabia	Sept. 8, 1976 (Ac)	Dec. 8, 1976.
Senegal	Dec. 9, 1984 (R)	Mar. 9, 1985.
Slovak Republic	Mar. 31, 1993 (S)	See Note 4.
Slovenia, Republic of	Oct. 10, 1992 (S)	See Note 2.
Spain	Jan. 10, 1986 (R)	Apr. 10, 1986.
Sri Lanka	Apr. 7, 1981 (Ac)	July 7, 1981.
Syria	Feb. 21, 1975 (Ac)	May 21, 1975.
Tadjikistan, Republic of	Aug. 11, 1992 (S)	See Note 1.
Tanzania	Aug. 2, 1977 (R)	Nov. 2, 1977.
Tunisia	Mar. 10, 1975 (R)	June 10, 1975.
Turkey	Apr. 21, 1981 (R)	July 21, 1981.
Ukraine	Apr. 28, 1988 (R)	July 28, 1988.
United States of America	Sept. 2, 1983 (Ac)	Dec. 2, 1983.
Uruguay	Aug. 9, 1977 (R)	Nov. 9, 1977.
Yugoslavia	Oct. 3, 1972 (R)	Jan. 3, 1973.
Zaire	Sept. 23, 1974 (R)	Dec. 23, 1974.
Zambia	June 21, 1985 (R)	Sept. 21, 1985.

Code for reading second column: Ratification (R); Acceptance (Ac); Accession (A); Succession (S).

Notes:

1. The Republic of Armenia, the Republic of Georgia, and the Republic of Tadjikistan each deposited a notification of succession in which each declared itself bound by the Convention as ratified by the USSR on April 28, 1988 and which entered into force on July 28, 1988.

2. Bosnia-Herzegovina, Croatia and the Republic of Slovenia each deposited notification of succession in which each declared itself bound by the Convention as ratified by Yugoslavia on Oct. 3, 1972 and entered into force on January 3, 1973.

3. The Government of the Russian Federation informed the Director General of UNESCO that the Russian Federation continues without interruption the participation of the USSR in all UNESCO Conventions. The instrument of ratification was deposited by the former USSR on April 28, 1988. and entered into force on July 28, 1988.

4. The Czech Republic and the Slovak Republic each deposited a notification of succession in which each declared itself bound by the Convention as accepted by Czechoslovakia on Feb. 14, 1977 and which entered into force on May 14, 1977.

* * * * *

George J. Weise,

Commissioner of Customs.

Approved: August 21, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–22644 Filed 9–12–95; 8:45 am]

BILLING CODE 4820–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AE06

Administrative Review Process, Testing Modifications to Prehearing Procedures and Decisions by Adjudication Officers

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are amending our rules to establish authority to test use of an adjudication officer who, under the *Plan for a New Disability Claim Process* approved by the Commissioner of Social Security in September 1994 (the disability redesign plan), would be the focal point for all prehearing activities when a request for a hearing before an administrative law judge (ALJ) is filed. The adjudication officer position is an integral part of the disability redesign plan. We expect that our tests of this position will provide us with sufficient information to determine the effect of the position on the hearing process. These final rules add two new sections setting out, for purposes of the tests we will conduct, the responsibilities of the adjudication officer in connection with a claim for Social Security or Supplemental Security Income (SSI) benefits based on disability. Unless specified, all other regulations related to our administrative review process and the disability determination process remain unchanged.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–6243.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration (SSA) decides claims for Social Security benefits under title II of the Social Security Act (the Act) and for SSI benefits under title XVI of the Act in an administrative review process that generally consists of four steps. Claimants who are not satisfied with the initial determination we make on a claim may request reconsideration. Claimants who are not satisfied with our reconsidered determination may request a hearing before an ALJ, and claimants who are dissatisfied with an ALJ's decision may request review by the Appeals Council. Claimants who have completed these steps and who are not satisfied with our final decision, may request judicial review of the decision in the Federal courts.

Generally, when a claim is filed for Social Security or SSI benefits based on disability, a State agency makes the initial and reconsideration disability determination for us. A hearing requested after we have made a reconsideration determination is held by an ALJ in one of the 132 hearing offices we have nationwide.

Applications for Social Security and SSI benefits based on disability have risen dramatically in recent years. The number of new disability claims SSA received in Fiscal Year (FY) 1994—3.56 million—represented a 40 percent increase over the number received in FY 1990—2.55 million. Requests for an ALJ hearing also have increased dramatically. In FY 1994, our hearing offices had almost 540,000 hearing receipts, and the overwhelming majority of these receipts were related to requests for a hearing filed by persons claiming disability benefits. In that year, the number of hearing receipts we received exceeded the number of receipts we received in FY 1990 by more than 70 percent. We expect hearing receipts to increase to more than 590,000 by the close of FY 1995.

Despite management initiatives that resulted in a record increase in ALJ productivity in FY 1994 and the hiring of more than 200 new ALJs and more than 650 new support staff in that year, the number of cases pending in our hearing offices has reached unprecedented levels—more than 480,000 at the end of FY 1994 and more than 554,000 at the end of July 1995.

In order to process this workload, the disability redesign plan contains other changes to the disability determination process by which SSA plans to decrease processing times while providing world-class service. For example, the disability redesign plan envisions a streamlined initial disability determination process which will result in more timely determinations and the elimination of the reconsideration step in the administrative review process for disability claims. We expect that one consequence of these initiatives will be an increase in the number of requests for hearings filed over the next several years. In light of these growing workload expectations, and to process more efficiently the hearing requests now pending at our hearing offices, we are issuing these final rules establishing the authority to test having an adjudication officer conduct prehearing development and, if appropriate, issue a decision wholly favorable to the claimant.

We expect that use of an adjudication officer, as described in our disability redesign plan, will enable us to ensure development of a more complete record and to issue decisions in a more efficient manner when a request for a hearing has been filed. We anticipate that our tests of the adjudication officer position will provide us with information regarding the effect use of an adjudication officer has on the current hearing process, and how to best use an adjudication officer under the redesigned disability process. We will do this by testing the adjudication officer position alone and in combination with one or more of the tests we are conducting pursuant to the final rules ''Testing Modifications to the Disability Determination Procedures,'' which were published in the **Federal Register** on April 24, 1995 (60 FR 20023) (to be codified at 20 CFR 404.906 and 416.1406).

We consider testing and subsequently implementing use of an adjudication officer to be a high agency priority. It is a complementary approach to the short-term disability initiatives we currently are undertaking. Our short-term initiatives are designed to process more efficiently pending requests for hearings and reduce the number of pending hearings to 375,000 at the end of calendar year 1996. One key short-term initiative is set out in the final regulations we published in the **Federal Register** on June 30, 1995 (60 FR 34126), which temporarily authorize attorney advisors in our Office of Hearings and Appeals (OHA) to conduct certain prehearing proceedings and, where appropriate, issue decisions which are wholly favorable to the claimant and any other party to the hearing. Our attorney advisor rules will no longer be effective on June 30, 1997, unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**. The principal aim of the final rules authorizing attorney advisors to conduct certain proceedings and issue wholly favorable decisions is to expedite decisions on pending requests for hearings. The use of an adjudication officer is focused on making better use

of existing resources, so that ongoing cases are processed more timely and in a more efficient manner. These final rules authorizing us to test use of an adjudication officer will allow us to test the effect of a process that we expect will allow us to better manage the hearing process in the years to come.

We find good cause for dispensing in this case with the 30-day delay in the effective date of a substantive rule provided for by 5 U.S.C. 553(d). As explained above and in the notice of proposed rulemaking (NPRM), the number of hearing requests pending at OHA has reached unprecedented levels, and the number of requests for hearings filed over the next several years is expected to continue to increase. In view of the number of pending and expected hearing requests, the beneficial effect we expect this rule to have on our ability to improve our service to claimants, and the importance we place on ensuring that we adjudicate claims timely and accurately, we find that it is in the public interest to make these final rules effective upon publication.

Prehearing Procedures Under the Disability Redesign Plan

On April 15, 1994, SSA published a notice in the **Federal Register** (59 FR 18188), setting out a proposal to reengineer the initial and administrative review process we use to determine an individual's entitlement to Social Security and SSI benefits based on disability. Comments on this comprehensive and far-reaching proposal were requested, and during the comment period that began on April 1, 1994, and ended on June 14, 1994, SSA received, from a broad spectrum of respondents, over 6,000 written responses and extensive oral comments. The commenters expressed their belief that improvements were needed to provide better service and to manage the claims process more effectively. While some concerns were expressed, the commenters praised SSA for taking on the task of redesigning the disability claim process.

On September 7, 1994, the Commissioner of Social Security accepted the revised disability redesign plan that was submitted for her approval on June 30, 1994, with the full understanding that some aspects of the proposal would require research and testing. The plan as approved by the Commissioner was published in the **Federal Register** on September 19, 1994 (59 FR 47887).

The plan anticipates a redesigned, two-step process for deciding Social Security and SSI claims based on disability. Under this process, the claimant will receive an initial determination, and if the claimant is not satisfied with this determination he or she may request an ALJ hearing. When a hearing is requested in the redesigned process, the focal point for prehearing activities will be an adjudication officer who will work with, among others, claimants and their representatives. Adjudication officers will have authority to make decisions wholly favorable to the claimant after the hearing is requested but before it is held where such decisions are warranted by the evidence.

The adjudication officer, together with the claimant and his or her representative, will have responsibility for ensuring that claims coming before ALJs are fully developed. The procedures outlined in the disability redesign plan make the best use of the services of representatives by more clearly defining the responsibility of claimants and their representatives to submit evidence. In addition, we anticipate that the hearing process will function more efficiently under the disability redesign plan because the adjudication officer will conduct an informal conference with a claimant's representative to identify the issues in dispute and to prepare proposed written agreements for the approval of the ALJ regarding those issues which are not in dispute and those issues proposed for hearing. We would not ask a claimant who does not have a representative to limit issues prior to the hearing. However, if the claimant obtains representation after the adjudication officer concludes that the case is ready for a hearing, the ALJ will return the case to the adjudication officer who will conduct an informal conference with the claimant and his representative.

In these final rules we are adding new §§ 404.943 and 416.1443. These sections set out, for purposes of the tests we will conduct, the responsibilities of the adjudication officer when a request for an ALJ hearing is filed.

For many years, our hearing offices have productively used various forms of prehearing development. We have conducted tests of a standard prehearing development process under our existing regulatory authority. This experience has given us some information about the effect the establishment of an adjudication officer position may have on the administrative review process. However, as we believe that further information will allow us to better evaluate the effect the position may have on the administrative review process, we will begin testing use of the adjudication officer as soon as possible. The tests are intended to assess whether the position meets the goals of the disability redesign process and whether it will have an effect on administrative and program expenditures. We also will manage closely the tests of the adjudication officer position to ensure that the procedures are consistently and effectively applied at all locations.

In accordance with the goals and directives of the National Performance Review's Reinventing Government Programs I and II, and our disability redesign plan, the role of the adjudication officer must be flexible to make the best use of our available program resources and also be consistent with providing world-class service to our customers. Accordingly, under these final rules, the adjudication officer may either be a qualified employee of SSA or an employee of a State agency that makes disability determinations for us. The adjudication officer may be located in our field offices or program service centers, in State agencies that make disability determinations for us, in OHA, or in our Regional Office of Program and Integrity Reviews.

Adjudication Officer Qualifications

The adjudication officer will be expected to bring relevant experience to the position, with additional training provided as may be necessary to complete the preparation of the individual to assume the full range of duties. The adjudication officer must have a thorough knowledge of the disability provisions, and be able to communicate effectively in informal conferences and in writing. The adjudication officer must be able to manage a substantial caseload, review independently the information in the claims file, determine the need for additional evidence, and evaluate the evidence under the applicable provisions of the Act, our regulations and rulings. In addition, the adjudication officer must be able to write factually and legally correct decisions that can be readily understood by the claimant.

Evaluation of Tests of Prehearing Procedures and Decisions by Adjudication Officers

These final rules establish the authority to test new prehearing procedures involving use of an adjudication officer. We plan to test the procedures in multiple sites, including our field offices and program service centers, State agencies that make disability determination for us, OHA, and our other regional offices to provide a means of determining the effect of the procedures in those sites. Each test will

involve a representative mix of geographic areas and caseloads. Before we commence each test, we will publish a notice in the **Federal Register** designating the test site(s) and duration of the test. The notice will also describe when the test will be conducted alone or in combination with one or more of the tests we are conducting pursuant to the final rules ''Testing Modifications to the Disability Determination Procedures'' which we published in the **Federal Register** on April 24, 1995 (60 FR 20023) (to be codified at 20 CFR 404.906 and 416.1406). We will evaluate test outcomes against the objectives of the disability redesign:

- Is the process user friendly?
- Does the process maintain a high level of payment quality?
- Does the process take less time?
- Is the process efficient?
- Does the process result in satisfying work for employees?

One of the most important aspects of our evaluation plan is to measure the effect the procedures used by the adjudication officer has on overall disability allowance rates. The responsibilities of an adjudication officer are not designed to change the overall allowance rates. In order to determine whether the actions taken by adjudication officers result in processing improvements consistent with expected outcomes, we will review evaluation results on a quarterly basis. If our evaluation shows that overall allowance rates increase or decrease unacceptably, we will cease use of, or make appropriate adjustments to the prehearing procedures, consistent with this regulatory authority.

In the preamble to the final rules on ''Testing Modifications to the Disability Determination Procedures,'' we indicated that we plan to test the adjudication officer prehearing procedures, as well as other aspects of the disability redesign which do not require regulatory changes, in combination with one or more of the four models described in those final rules at some test sites. This continues to be our intention. Such tests will provide us with a body of information about each individual part of the redesign, as well as whether the combined effect of the redesign meets our goals of making the disability process user friendly, more timely and more accurate and efficient. It will also provide us with information about program expenditures in connection with the overall redesign.

Public Comments

These regulatory provisions were published in the **Federal Register** as an NPRM on June 9, 1995 (60 FR 30482). We provided the public with a 30-day comment period. We received 21 letters in response to this notice from a variety of sources, including individuals employed by SSA as attorney advisors or ALJs, State agencies which make disability determinations for us, representatives of legal services organizations, union representatives, and a private attorney.

In general, the comments expressed concerns regarding several aspects of the proposed rule and requested that we not promulgate the rule as proposed. Some comments suggested changes to the rules, or identified provisions in the rule that the commenters believed required clarification. Some of the comments we received were outside the scope of the proposed rule, and therefore have not been addressed. The substantive comments made by the commenters and our responses are set out below. Because some of the comments were detailed, we condensed, summarized or paraphrased them. We have, however, tried to summarize the commenters's views accurately and respond to all of the significant issues raised by the commenters.

As discussed in our responses to the comments we received, we have made some changes to the proposed rule to clarify certain aspects of the rule. However, as most of the comments we received related to issues that we had considered previously in the development of the disability redesign plan, we are issuing these final rules with no substantive changes.

Comment: A number of commenters expressed concern that the proposed rule would change the responsibilities of claimants and their representatives for obtaining and submitting evidence.

Response: This is not our intent. Under the provisions of titles II and XVI of the Act and our existing regulations, a claimant will not be found disabled unless he or she submits evidence to support his or her claim for disability benefits or SSI payments based on disability. (See sections 223(d)(5)(A) and 1614(a)(3)(G) of the Act, and 20 CFR 404.704–404.705, 404.935, 404.1512, 404.1514, 416.912(c), and 416.1435). The claimant's responsibility regarding the submission of evidence to support the claim for benefits is equally the responsibility of a representative appointed by the claimant. (See 20 CFR 404.1710, 404.1715, 416.1510 and 416.1515).

The disability redesign plan reflects the principle of claimant and claimant representative responsibility in the submission of evidence while defining new procedures to promote effective cooperation between SSA and claimants and their representatives in ensuring the development of complete evidentiary records. The plan makes the best use of a representative's services early in the process, and these final rules do not impose on claimants or their representatives significant responsibilities that they do not currently have.

Testing use of an adjudication officer as part of the prehearing procedures we follow will allow us to assess the extent to which having an adjudication officer work with claimants and representatives in developing complete evidentiary records will contribute to improved and more expeditious claims development and, thereby, a more effective adjudication process.

Comment: Several commenters stated that the proposed rule would result in different treatment of represented and unrepresented claimants and encourage representation. Other commenters thought the proposed rule would discourage representation.

Response: Like the proposed rule, these final rules contain slightly different procedures in two areas—the development of additional evidence and the holding of prehearing conferences. These differences in procedures result from a claimant's decision to proceed without representation. We believe that the differences in procedures are warranted in both instances and that these final rules will not result in unfair treatment of any claimants. The procedures reflected in these final rules also involve a continuance of existing practices in our hearing offices.

Our intent is neither to encourage nor discourage representation. Rather, under these final rules, and as contemplated by the disability redesign plan, we will remind the claimant of his or her right to representation. The information regarding the right to representation provided by the adjudication officer is designed to prevent delays caused by a lack of understanding of that right and to encourage the claimant to decide about the need for representation and choice of representative as soon as practicable. In all cases, however, the adjudication officer retains his responsibility to ensure complete evidentiary development with the claimant and any appointed representative and will work with the claimant and/or the representative in developing evidence. The adjudication officer will assist unrepresented claimants and, if necessary, claimant representatives in securing evidence. Generally, unrepresented claimants will more frequently need assistance than represented claimants. However, all

claimants will be treated fairly and will be assisted if necessary in meeting their obligations to produce evidence. That approach continues current practices under which ALJs exercise a heightened responsibility in assisting unrepresented claimants.

The adjudication officer and the claimant's representative will participate in an informal conference. One of the purposes of this informal conference is to attempt to reach proposed agreements for the approval of the ALJ regarding the issues which are not in dispute and those issues proposed for the hearing. However, the adjudication officer may conduct an informal conference with an unrepresented claimant, the main purpose of which will be to explain to the claimant the issues which may arise at the hearing. In addition, if a claimant obtains representation after the adjudication officer has concluded that the case is ready for a hearing, the ALJ will return the case for an informal conference with the adjudication officer. Under current practice, personnel in our OHA hearing offices generally do not request unrepresented claimants to participate in prehearing conferences, and prehearing conferences are sometimes scheduled after a claimant who was unrepresented obtains representation. The final rules do not contain specific criteria regarding when an adjudication officer will hold an informal conference with an unrepresented claimant so that the adjudication officer will have some discretion in this area.

An essential function of the adjudication officer is to provide a point of contact for unrepresented claimants in order to explain the hearing process and the right to representation. The adjudication officer also will give unrepresented claimants referral sources for obtaining representation and copies of documents needed in appointing a representative. Under current practice, personnel in our OHA hearing offices remind claimants about their right to representation and provide information about referral sources in acknowledging requests for a hearing. The purpose of those actions, like the similar actions to be taken by the adjudication officers, is to encourage prompt and fully informed decisions about securing representation. There is no attempt on our part to encourage or discourage representation. Under the redesigned process, as under the current process, the decision to proceed with or without representation will continue to be a decision for the claimant to make.

Comment: Some commenters thought that the proposed rule would create a new step in the administrative review process, would reduce claimant access to an ALJ, and delay the adjudication of claims.

Response: An overriding purpose of the disability redesign plan is to shorten and expedite the administrative process. To reach that goal, the plan contemplates eventual elimination of the reconsideration step and the creation of the adjudication officer position. Use of an adjudication officer is not intended to serve as a replacement for reconsideration, as some commenters thought. Instead, the disability redesign plan contemplates the elimination of reconsideration because the initial determination will be the result of a process that ensures a more fully developed evidentiary record and provides an opportunity for the claimant to present additional evidence at a predecision interview. When a claimant is dissatisfied with the initial determination and requests an ALJ hearing, the adjudication officer's role will be to expedite the completion of any necessary prehearing activities and to issue, where warranted by the evidence, a decision which is wholly favorable to the claimant without the need for a hearing.

Under these final rules, adjudication officers will not have authority to deny claims or to dismiss requests for an ALJ hearing. The intent of the redesign plan, and these final rules, is to increase claimant access to the ALJ by reducing the time required to receive an ALJ hearing in cases in which a hearing is necessary. Moreover, these final rules preserve a claimant's right to a hearing which will be conducted by an ALJ, if he or she is dissatisfied with the adjudication officer's decision.

Comment: Other commenters expressed concern that the proposed rule would force ALJs to hear cases that are improperly developed. These commenters stated that the ALJ's authority to consider additional evidence or issues should be clarified.

Response: We do not agree with the commenters' concerns that these rules would force ALJs to hear and decide improperly developed cases. Sections 404.943(b)(4) and 416.1443(b)(4) of the proposed rule stated that at the point at which a case is referred for a hearing, ''the administrative law judge conducts all further hearing proceedings, including scheduling and holding a hearing and issuing a decision or dismissal of your request for a hearing.'' New §§ 404.943 and 416.1443 do not deny to an ALJ any authority he or she may exercise under existing regulations. In order to make this point clearer, however, we have clarified in these final rules that the proceeding an ALJ may conduct can include the development of additional evidence.

Comment: Several commenters stated that the provision of the proposed rule providing that the case would be returned to the adjudication officer if the claimant obtained representation after the AO concluded that the case was ready for a hearing, would create delays and discourage representation.

Response: We do not agree with the commenters, and it is certainly not our intent to create delays or to discourage representation. We believe that this procedure will enable us to interact with the claimant's representative in a better and more timely manner and that the AO, working with the claimant's representative, will be able to ensure that the evidentiary record is as complete as possible prior to the hearing. By ensuring the development of a complete record before the hearing, we intend that this procedure will expedite both the hearing and the issuance of a hearing decision.

Comment: A number of commenters thought that the proposed rule was purposely vague or unclear on how certain issues will be handled in the process, e.g., the return of cases by an ALJ to an adjudication officer and whether and how new evidence and issues could be considered by an ALJ.

Response: As noted above and in the NPRM (60 FR 30482, 30483), new §§ 404.943 and 416.1443 establish authority to test having an adjudication officer be the focal point of prehearing activities, as described in the disability redesign plan. The redesign plan set forth a broad description of a new disability process and of the adjudication officer position and left operational, organizational and other details of the process to be developed (59 FR 18188). Our intent is not to be vague or unclear; rather, our intent is to authorize testing in which detailed operating procedures may be addressed and developed incrementally. As noted above, however, we have clarified in these final rules that the ALJ may consider additional evidence, and is not limited to the record developed by the claimant, his or her representative and the adjudication officer. We also have clarified that the written agreements prepared by the adjudication officer with the claimant's representative are only proposed agreements for the approval of the ALJ. These agreements are subject to acceptance by and/or further development by the ALJ at the hearing. In addition, we have clarified that the ALJ may return the case to the adjudication officer for further development or to obtain additional

evidence at any point on or before the date of the hearing.

Comment: Several commenters objected to a perceived acceleration of the implementation of the adjudication officer, particularly before other parts of the disability redesign were in place, including the disability claims manager position called for in the disability redesign plan.

Response: These final rules establish authority to test the use of an adjudication officer; they do not establish the authority to implement the use of the adjudication officer position on a nationwide basis. The purpose of the rules is to test the use of an adjudication officer position and its procedures in a variety of sites and circumstances. We will test the position alone and in combination with one or more of the tests we are conducting pursuant to the final rules we recently published on ''Testing Modifications to the Disability Determination Procedures'' (60 FR 20023). The modifications to be tested under those rules include the position of disability claims manager and elimination of the reconsideration level of the existing disability claims process.

Comment: Two commenters expressed the view that DDS employees are best suited for the adjudication officer position; five other commenters stated that the adjudication officer should be an attorney or have legal training.

Response: Comments regarding the qualifications of the adjudication officer, throughout the planning process as well as in response to the NPRM, essentially have fallen into the two categories reflected above. The Commissioner has made a decision that for testing purposes the adjudication officer may be an employee of SSA or a State agency that makes disability determinations for us. The adjudication officer will be expected to bring relevant experience to the position. While legal experience is deemed desirable, it is not required, provided the individual is qualified to communicate effectively in informal conferences and in writing. The issues regarding whether the adjudication officer must have the qualifications for an attorney position are issues upon which testing information is required.

Comment: Two commenters expressed the view that the adjudication officer should be located in OHA offices only.

Response: We have not adopted this comment. We believe the testing of the adjudication officer position should not be limited to OHA sites. Testing the position in a variety of sites will provide information on the most effective location(s) for the adjudication officers. We also wish to assess the feasibility of increasing accessibility to claimants and their representatives by locating the adjudication officers in community based sites.

Comment: Some of the commenters thought the proposed rule would violate a claimant's right to due process under the Constitution and a full and fair hearing under the Act if the rule precluded the ALJ from considering new evidence or issues at the hearing.

Response: We do not agree that these rules violate a claimant's right to due process under the Constitution or a full and fair hearing under the Act in any way. These final rules do not preclude or interfere with a claimant's right to a full and fair hearing before an ALJ. Rather, the claimant's right to a hearing conducted by an ALJ is explicitly preserved even in instances in which the adjudication officer makes a wholly favorable decision. The preservation of the claimant's right to an ALJ hearing is consistent with due process and equal protection under the Constitution. Moreover, the due process concerns expressed by the commenters were premised on the commenters' belief that the proposed rule limited the ALJ's ability to consider additional evidence or issues at the hearing. As we have discussed above and clarified in these final rules, the ALJ's ability to consider additional evidence or issues under these final rules remains the same as it is under our current regulations.

Comment: A number of commenters expressed the view that the adjudication officer is unnecessary because of the availability of preferable alternatives, specifically the short-term disability initiatives we are currently undertaking. Other commenters requested that we clarify the relationship between the adjudication officer and the attorney advisors in OHA who have been temporarily authorized to make fully favorable decisions in certain instances pursuant to the short-term disability initiatives.

Response: The adjudication officer is part of SSA's long term plans for redesigning and fundamentally improving the disability claim process. Our short-term initiatives are designed to process pending workloads more efficiently, not to bring about the kind of changes that will fundamentally improve the disability claim process.

The short-term disability initiatives include final rules issued on June 30, 1995 (60 FR 34126) which temporarily authorize attorney advisors in OHA to conduct certain prehearing proceedings and, where appropriate based on the documentary record developed as a result of these proceedings, to issue decisions that are wholly favorable to the parties to the hearing. Although there are similarities in functions under this short-term initiative and the adjudication officer process, there are substantial differences as well. The primary focus of the attorney advisor process is on the rapid identification of pending cases in which a wholly favorable decision can be made without a hearing. The adjudication officer also will identify claims in which a wholly favorable decision may be made, but the adjudication officer's functions are more broadly concerned with the full range of prehearing activities, particularly development of the record.

Comment: A few commenters expressed concern that the proposed rule provided no study protocol.

Response: We will have a study and evaluation plan in place to assure a valid and accurate assessment of the degree to which use of an adjudication officer attains the goals we wish to achieve before any national implementation of the process. The approach we are following in this regard is similar to the approach we are following in the related testing to be conducted under final rules on ''Testing Modifications to the Disability Determination Procedures'' (60 FR 20023, 20025).

Comment: Some commenters expressed concern that the proposed rule provided no clearly defined decision-making standard.

Response: Adjudication officers will be bound by the Social Security Act, the regulations, and Social Security Rulings, including Social Security Acquiescence Rulings. They will also rely on other guidance published by the agency. This is consistent with established standards of decision making in SSA.

Comment: Other commenters expressed concern that the proposed rule provided no specific quality assurance review procedures.

Response: We are establishing an intensive quality assurance review program that will provide us with information regarding the quality of the adjudication officer work process, as well as the procedures, sites and the assumptions set out in detail in the disability redesign plan. In addition, the final rules authorize the Appeals Council to review the adjudication officer's decision on its own motion. No additional changes in these final rules or existing regulations are required to allow us to subject the decisions made by adjudication officers to quality assurance review procedures.

Comment: Several commenters expressed concerns that the adjudication officer position as proposed for testing violated Federal/State principles applicable in the administration of the Social Security disability programs, including the principle that States cannot make decisions.

Response: We are of the opinion that sections 205(b)(1) and 221(a)(1) of the Act give the Commissioner, or her agents, broad authority to determine rights to benefits under the Act. These sections contain no language specifically excluding State DDS employees who adjudicate disability claims for us from acting as agents of the Commissioner in this regard. Moreover, having DDS employees as adjudication officers is consistent with SSA's current regulations at 20 CFR 404.1613 and 416.1013 governing Federal and State jurisdiction with respect to disability determination workloads and adding new classes of cases and decision-makers.

Comment: Some commenters also expressed concern that the adjudication officer process would require Federal oversight of decisions made by employees of State agencies.

Response: The Social Security disability programs under titles II and XVI of the Act establish a Federal program which includes a role for the States in the adjudication process. As in all other areas of the disability programs, the adjudication officer will be subject to SSA oversight, both in effectuating the adjudication officer's wholly favorable decisions and in quality assurance functions.

Comment: Several commenters expressed the view that the adjudication officer process will increase administrative and program costs, particularly on the basis that the process will not decrease OHA workloads unless it results in the allowance of many cases.

Response: We are conducting these tests to determine whether use of an adjudication officer will have an effect on program and administrative expenditures. The adjudication officer's function is to provide a focal point for all prehearing activities. While adjudication officers may issue wholly favorable decisions where warranted, they can contribute to the improvement of the disability process in other ways as well. Use of an adjudication officer is not designed to change the overall allowance rates. Moreover, as set out in the NPRM and above, in order to determine whether the prehearing procedures result in processing improvements consistent with expected outcomes, we will review evaluation results on a quarterly basis and make appropriate adjustments to, or cease use of, the prehearing procedures consistent with this regulatory authority if there is evidence that overall allowance rates increase or decrease unacceptably.

Comment: One commenter suggested changes to the proposed rules to clarify in several places in the regulations that adjudication officers may only issue wholly favorable decisions.

Response: We believe these final rules clearly limit the adjudication officers to making wholly favorable decisions, and do not require further clarification as suggested by the commenter.

Comment: Two commenters expressed the view that the 30-day comment period was too short.

Response: We do not agree that a longer comment period was warranted. We provided a shorter comment period than the 60-day period we usually provide because of the salutary effect we expect these rules to have on our ability to improve our service to claimants, and the importance we place on ensuring that we adjudicate claims timely and accurately. We also believe that the 30-day period is appropriate in this instance because we previously provided the public an extended opportunity to comment on all aspects of the disability redesign plan, including the establishment of the adjudication officer position.

Comment: One commenter suggested that we add a sentence in § 404.943(b)(1) to clarify that a claimant's representative will be allowed to participate in the interview with the claimant.

Response: We have not adopted this comment because the final rules we are issuing provide authority for us to test the use of an adjudication officer. They do not change in any way the rules we follow regarding representation. Our existing regulations at 20 CFR 404.1705 and 416.1505 provide that claimants may obtain representation at any time. We notify the claimant's representative of any administrative actions we take, and we also afford the representative the opportunity to participate in any meetings or interviews which we conduct with the claimant he or she represents.

Comment: We were also asked by a commenter to clarify in § 404.943(a)(2) of the regulations that some persons would be assigned to a control group for purposes of the tests we will conduct under these final rules.

Response: Although we will have a control group, cases in this group will be processed in accordance with our current regulations, and the control group will be used to provide comparative data when we evaluate the records of cases that were used in our tests. For these reasons, a specific reference to the control group procedures is not needed in these final rules, and the change suggested by the commenter has not been made.

Comment: Two commenters asked us to clarify whether the adjudication officer would schedule a date for the hearing with an ALJ.

Response: The answer to this question is no. These final rules do not change our current procedures under which the ALJ schedules the hearing. However, we will use two new methods in conjunction with the tests we will conduct under these final rules to facilitate the ability of the ALJ to schedule a hearing. Under the first method, before the prehearing procedures are completed, the adjudication officer will ask the claimant or the claimant's representative to provide two or three dates within the following 35–50 days on which the claimant and his or her representative could be available for a hearing. These dates will be part of the record the adjudication officer forwards to the hearing office, where the case will be reviewed and a hearing scheduled for one of the dates in the file. The second method which we intend to test is one where the adjudication officer will arrange the time and date for the hearing by having the adjudication officer match a time acceptable to the claimant and his or her representative with an available hearing time out of a block of times for a hearing provided by the hearing office. The block of times will be the time periods within the following 2 to 3 months when time is available to hold hearings. The adjudication officer, however, will not access individual ALJ scheduling calendars and will not schedule a case with a specific ALJ. Under either procedure, the hearing office will prepare and send out the hearing notice 20 days prior to the hearing. The objective of both methods is to ensure that the hearing is scheduled and held in a timely and efficient manner following the conclusion of the prehearing procedures.

Comment: One commenter requested that the provision in § 404.943(c)(1) be revised to clarify the authority of the adjudication officer to issue a decision after a claim has been referred to an ALJ, but before the hearing is held.

Response: We have revised §§ 404.943(b)(4) and 416.1443(b)(4) to clarify that an ALJ may return a claim to the adjudication officer for further development prior to the hearing. Under

the final rules, the ALJ may return the claim to the adjudication officer on or before the date of the hearing to complete the development of the evidence and for such other action as necessary. If the ALJ exercises this authority, the adjudication officer may make a decision that is wholly favorable to the claimant if it is warranted by the evidence, or the adjudication officer may refer the claim to the ALJ when the additional prehearing procedures are completed.

Comment: One commenter requested us to clarify that, when the claimant or representative is unable to agree with the adjudication officer that the development of the evidence is complete, the adjudication officer will note the disagreement and refer the claim to the administrative law judge for further proceedings.

Response: We agree with the comment and have clarified §§ 404.943(b)(4) and 416.1443(b)(4).

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review. These rules do not adversely affect State, local or tribal governments. The administrative costs of the tests will be covered within budgeted resources. No program costs are expected to result from processing of the test cases. We have not, therefore, prepared a cost/benefit analysis under Executive Order 12866.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or record keeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: August 23, 1995.

Shirley Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205 (a), (b), and (d)–(h), 221(d), 225 and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), 425 and 902(a)(5); 31 U.S.C. 3720A).

2. New § 404.943 is added under the undesignated center heading ''Hearing Before an Administrative Law Judge'' to read as follows:

§ 404.943 Responsibilities of the adjudication officer.

(a)(1) *General.* Under the procedures set out in this section we will test modifications to the procedures we follow when you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in § 404.1505 is at issue. These modifications will enable us to test the effect of having an adjudication officer be your primary point of contact after you file a hearing request and before you have a hearing with an administrative law judge. The tests may be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 404.906. The adjudication officer, working with you and your representative, if any, will identify issues in dispute, develop evidence, conduct informal conferences, and conduct any other prehearing proceeding as may be necessary. The adjudication officer has the authority to make a decision wholly favorable to you if the evidence so warrants. If the adjudication officer does not make a decision on your claim, your hearing request will be assigned to an administrative law judge for further proceedings.

(2) *Procedures for cases included in the tests.* Prior to commencing tests of the adjudication officer position in selected site(s), we will publish a notice in the **Federal Register**. The notice will describe where the specific test site(s) will be and the duration of the test(s). We will also state whether the tests of the adjudication officer position in each site will be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 404.906. The individuals who participate in the test(s) will be assigned randomly to a test group in each site where the tests are conducted.

(b)(1) *Prehearing procedures conducted by an Adjudication Officer.* When you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in § 404.1505 is at issue, the adjudication officer will conduct an interview with you. The interview may take place in person, by telephone, or by videoconference, as the adjudication officer determines is appropriate under the circumstances of your case. If you file a request for an extension of time to request a hearing in accordance with § 404.933(c), the adjudication officer may develop information on, and may decide where the adjudication officer issues a wholly favorable decision to you that you had good cause for missing the deadline for requesting a hearing. To determine whether you had good cause for missing the deadline, the adjudication officer will use the standards contained in § 404.911.

(2) *Representation.* The adjudication officer will provide you with information regarding the hearing process, including your right to representation. As may be appropriate, the adjudication officer will provide you with referral sources for representation, and give you copies of necessary documents to facilitate the appointment of a representative. If you have a representative, the adjudication officer will conduct an informal conference with the representative, in person or by telephone, to identify the issues in dispute and prepare proposed written agreements for the approval of the administrative law judge regarding those issues which are not in dispute and those issues proposed for the

hearing. If you decide to proceed without representation, the adjudication officer may hold an informal conference with you. If you obtain representation after the adjudication officer has concluded that your case is ready for a hearing, the administrative law judge will return your case to the adjudication officer who will conduct an informal conference with you and your representative.

(3) *Evidence.* You, or your representative, may submit, or may be asked to obtain and submit, additional evidence to the adjudication officer. As the adjudication officer determines is appropriate under the circumstances of your case, the adjudication officer may refer the claim for further medical or vocational evidence.

(4) *Referral for a hearing.* The adjudication officer will refer the claim to the administrative law judge for further proceedings when the development of evidence is complete, and you or your representative agree that a hearing is ready to be held. If you or your representative are unable to agree with the adjudication officer that the development of evidence is complete, the adjudication officer will note your disagreement and refer the claim to the administrative law judge for further proceedings. At this point, the administrative law judge conducts all further hearing proceedings, including scheduling and holding a hearing (§ 404.936), considering any additional evidence or arguments submitted (§§ 404.935, 404.944, 404.949, 404.950), and issuing a decision or dismissal of your request for a hearing, as may be appropriate (§§ 404.948, 404.953, 404.957). In addition, if the administrative law judge determines on or before the date of your hearing that the development of evidence is not complete, the administrative law judge may return the claim to the adjudication officer to complete the development of the evidence and for such other action as necessary.

(c)(1) *Wholly favorable decisions issued by an adjudication officer.* If, after a hearing is requested but before it is held, the adjudication officer decides that the evidence in your case warrants a decision which is wholly favorable to you, the adjudication officer may issue such a decision. For purposes of the tests authorized under this section, the adjudication officer's decision shall be considered to be a decision as defined in § 404.901. If the adjudication officer issues a decision under this section, it will be in writing and will give the findings of fact and the reasons for the decision. The adjudication officer will evaluate the issues relevant to determining whether or not you are disabled in accordance with the provisions of the Social Security Act, the rules in this part and part 422 of this chapter and applicable Social Security Rulings. For cases in which the adjudication officer issues a decision, he or she may determine your residual functional capacity in the same manner that an administrative law judge is authorized to do so in § 404.1546. The adjudication officer may also evaluate the severity of your mental impairments in the same manner that an administrative law judge is authorized to do so under § 404.1520a. The adjudication officer's decision will be based on the evidence which is included in the record and, subject to paragraph (c)(2) of this section, will complete the actions that will be taken on your request for hearing. A copy of the decision will be mailed to all parties at their last known address. We will tell you in the notice that the administrative law judge will not hold a hearing unless a party to the hearing requests that the hearing proceed. A request to proceed with the hearing must be made in writing within 30 days after the date the notice of the decision of the adjudication officer is mailed.

(2) *Effect of a decision by an adjudication officer.* A decision by an adjudication officer which is wholly favorable to you under this section, and notification thereof, completes the administrative action on your request for hearing and is binding on all parties to the hearing and not subject to further review, unless—

(i) You or another party requests that the hearing continue, as provided in paragraph (c)(1) of this section;

(ii) The Appeals Council decides to review the decision on its own motion under the authority provided in § 404.969;

(iii) The decision is revised under the procedures explained in §§ 404.987 through 404.989; or

(iv) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 404.984.

(3) *Fee for a representative's services.* The adjudication officer may authorize a fee for your representative's services if the adjudication officer makes a decision on your claim that is wholly favorable to you, and you are represented. The actions of, and any fee authorization made by, the adjudication officer with respect to representation will be made in accordance with the provisions of subpart R of this part.

(d) *Who may be an adjudication officer.* The adjudication officer described in this section may be an employee of the Social Security Administration or a State agency that makes disability determinations for us.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart N continues to read as follows:

Authority: Sec. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

2. New § 416.1443 is added under the undesignated center heading ''Hearing Before an Administrative Law Judge'' to read as follows:

§ 416.1443 Responsibilities of the adjudication officer.

(a)(1) *General.* Under the procedures set out in this section we will test modifications to the procedures we follow when you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in §§ 416.905 and 416.906 is at issue. These modifications will enable us to test the effect of having an adjudication officer be your primary point of contact after you file a hearing request and before you have a hearing with an administrative law judge. The tests may be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 416.1406. The adjudication officer, working with you and your representative, if any, will identify issues in dispute, develop evidence, conduct informal conferences, and conduct any other prehearing proceeding as may be necessary. The adjudication officer has the authority to make a decision wholly favorable to you if the evidence so warrants. If the adjudication officer does not make a decision on your claim, your hearing request will be assigned to an administrative law judge for further proceedings.

(2) *Procedures for cases included in the tests.* Prior to commencing tests of the adjudication officer position in selected site(s), we will publish a notice in the **Federal Register**. The notice will describe where the specific test site(s) will be and the duration of the test(s). We will also state whether the tests of the adjudication officer position in each site will be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 416.1406. The individuals who participate in the

test(s) will be assigned randomly to a test group in each site where the tests are conducted.

(b)(1) *Prehearing procedures conducted by an Adjudication Officer.* When you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in §§ 416.905 and 416.906 is at issue, the adjudication officer will conduct an interview with you. The interview may take place in person, by telephone, or by videoconference, as the adjudication officer determines is appropriate under the circumstances of your case. If you file a request for an extension of time to request a hearing in accordance with § 416.1433(c), the adjudication officer may develop information on, and may decide where the adjudication officer issues a wholly favorable decision to you that you had good cause for missing the deadline for requesting a hearing. To determine whether you had good cause for missing the deadline, the adjudication officer will use the standards contained in § 416.1411.

(2) *Representation.* The adjudication officer will provide you with information regarding the hearing process, including your right to representation. As may be appropriate, the adjudication officer will provide you with referral sources for representation, and give you copies of necessary documents to facilitate the appointment of a representative. If you have a representative, the adjudication officer will conduct an informal conference with the representative, in person or by telephone, to identify the issues in dispute and prepare proposed written agreements for the approval of the administrative law judge regarding those issues which are not in dispute and those issues proposed for the hearing. If you decide to proceed without representation, the adjudication officer may hold an informal conference with you. If you obtain representation after the adjudication officer has concluded that your case is ready for a hearing, the administrative law judge will return your case to the adjudication officer who will conduct an informal conference with you and your representative.

(3) *Evidence.* You, or your representative, may submit, or may be asked to obtain and submit, additional evidence to the adjudication officer. As the adjudication officer determines is appropriate under the circumstances of your case, the adjudication officer may refer the claim for further medical or vocational evidence.

(4) *Referral for a hearing.* The adjudication officer will refer the claim to the administrative law judge for further proceedings when the development of evidence is complete, and you or your representative agree that a hearing is ready to be held. If you or your representative are unable to agree with the adjudication officer that the development of evidence is complete, the adjudication officer will note your disagreement and refer the claim to the administrative law judge for further proceedings. At this point, the administrative law judge conducts all further hearing proceedings, including scheduling and holding a hearing, (§ 416.1436), considering any additional evidence or arguments submitted (§§ 416.1435, 416.1444, 416.1449, 416.1450), and issuing a decision or dismissal of your request for a hearing, as may be appropriate (§§ 416.1448, 416.1453, 416.1457). In addition, if the administrative law judge determines on or before the date of your hearing that the development of evidence is not complete, the administrative law judge may return the claim to the adjudication officer to complete the development of the evidence and for such other action as necessary.

(c)(1) *Wholly favorable decisions issued by an adjudication officer.* If, after a hearing is requested but before it is held, the adjudication officer decides that the evidence in your case warrants a decision which is wholly favorable to you, the adjudication officer may issue such a decision. For purposes of the tests authorized under this section, the adjudication officer's decision shall be considered to be a decision as defined in § 416.1401. If the adjudication officer issues a decision under this section, it will be in writing and will give the findings of fact and the reasons for the decision. The adjudication officer will evaluate the issues relevant to determining whether or not you are disabled in accordance with the provisions of the Social Security Act, the rules in this part and part 422 of this chapter and applicable Social Security Rulings. For cases in which the adjudication officer issues a decision, he or she may determine your residual functional capacity in the same manner that an administrative law judge is authorized to do so in § 416.946. The adjudication officer may also evaluate the severity of your mental impairments in the same manner that an administrative law judge is authorized to do so under § 416.920a. The adjudication officer's decision will be based on the evidence which is included in the record and, subject to paragraph (c)(2) of this section, will complete the actions that will be taken on your request for hearing. A copy of the decision will be mailed to all parties at their last known address. We will tell you in the notice that the administrative law judge will not hold a hearing unless a party to the hearing requests that the hearing proceed. A request to proceed with the hearing must be made in writing within 30 days after the date the notice of the decision of the adjudication officer is mailed.

(2) *Effect of a decision by an adjudication officer.* A decision by an adjudication officer which is wholly favorable to you under this section, and notification thereof, completes the administrative action on your request for hearing and is binding on all parties to the hearing and not subject to further review, unless—

(i) You or another party requests that the hearing continue, as provided in paragraph (c)(1) of this section;

(ii) The Appeals Council decides to review the decision on its own motion under the authority provided in § 416.1469;

(iii) The decision is revised under the procedures explained in §§ 416.1487 through 416.1489; or

(iv) In a case remanded by a Federal court, the Appeals Council assumes jurisdiction under the procedures in § 416.1484.

(3) *Fee for a representative's services.* The adjudication officer may authorize a fee for your representative's services if the adjudication officer makes a decision on your claim that is wholly favorable to you, and you are represented. The actions of, and any fee authorization made by, the adjudication officer with respect to representation will be made in accordance with the provisions of subpart O of this part.

(d) *Who may be an adjudication officer.* The adjudication officer described in this section may be an employee of the Social Security Administration or a State agency that makes disability determinations for us.

[FR Doc. 95–22579 Filed 9–12–95; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 19

Duty to Report Violations; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulation that gives the responsibility to perform the centralized investigative activities in FDA to another office. The responsibility was recently transferred from the Division of Ethics and Program Integrity, Office of Management and Operations, FDA, to the Office of Internal Affairs, FDA. This action will codify this transfer of functions.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Tommy L. Hampton, Office of Internal Affairs (HF–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0243.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 23, 1995 (60 FR 4417), the Department of Health and Human Services published a notice to reflect an organizational change in FDA. The positions assigned to perform the centralized investigative activities located in the Division of Ethics and Program Integrity, Office of Management, Office of Management and Systems, FDA, were transferred to the new Office of Internal Affairs within the Office of the Commissioner.

The new Office of Internal Affairs will serve as an FDA investigative resource to conduct internal FDA investigations and support the Office of Inspector General investigations. Therefore, the agency is amending 21 CFR 19.21 to reflect the organizational change.

List of Subjects in 21 CFR Part 19

Conflict of interests.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 19 is amended as follows:

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

1. The authority citation for 21 CFR part 19 continues to read as follows:

Authority: Sec. 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371).

2. Section 19.21 is amended in paragraph (a) by removing ''Division of Ethics and Program Integrity, Office of Management and Operations'' and adding in its place ''Office of Internal Affairs, Office of the Commissioner'' ; in paragraph (b) by removing ''Division of Ethics and Program Integrity'' the two times it appears and adding in its place ''Office of Internal Affairs''; and in paragraph (c) by removing ''Division of Ethics and Program Integrity'' and adding in its place ''Office of Internal Affairs''.

Dated: September 5, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–22636 Filed 9–12–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 175

[Docket No. 93F–0276]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethoxylated primary linear alcohols of greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000 for use as components of food packaging adhesives. This action is in response to a petition filed by Petrolite Corp.

DATES: Effective September 13, 1995; written objections and requests for a hearing October 13, 1995.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 17, 1993 (58 FR 48659), FDA announced that a food additive petition (FAP 3B4390) had been filed by Petrolite Corp., 369 Marshall Ave., St. Louis, MO 63119–1897. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of ethoxylated primary linear alcohols of greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000 for use as components of food packaging adhesives.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted 1,4-dioxane and ethylene oxide, carcinogenic impurities, resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as 1,4-dioxane and ethylene oxide, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called ''general safety clause'' of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer or Delaney clause (section 409(c)(3)(A) of the act) further provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive, *Scott* v. *FDA* 728 F.2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, ethoxylated primary linear alcohols of no greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000, will result in exposure to the additive of no greater than 50 parts per billion (ppb) in the daily diet (Ref. 1).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data from acute toxicity studies on the additive. No adverse effects were reported in these studies.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in the additive,

1,4-dioxane and ethylene oxide. This risk evaluation of 1,4-dioxane and ethylene oxide has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. 1,4-Dioxane

FDA has estimated the hypothetical worst-case exposure to 1,4-dioxane from the petitioned use of the additive in the manufacture of adhesives to be 0.25 part per trillion of the daily diet or 750 picogram (pg)/person/day (Ref. 1). The agency used data from a carcinogenesis bioassay on 1,4-dioxane conducted by the National Cancer Institute (Ref. 3), to estimate the upper-bound lifetime human risk from exposure to this chemical stemming from the proposed use of the additive (Ref. 3). The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the estimated worst-case exposure of 750 pg/ person/day, FDA estimates that the upper-bound limit of individual lifetime risk from the use of the subject additive is 2.7×10^{-11}, or 2.7 in 100 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to 1,4-dioxane would result from the proposed use of the additive.

B. Ethylene Oxide

FDA estimated that the hypothetical worst-case exposure to ethylene oxide from the potential use of the additive in the manufacture of adhesives to be 0.05 part per trillion of the daily diet or 150 pg/person/day (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany, to estimate the upper-bound level of lifetime human risk from exposure to ethylene oxide stemming from the proposed use of the additive (Ref. 5). The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach.

Based on a potential exposure of 150 pg/person/day, FDA estimates that the upper-bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the subject additive is 2.8×10^{-10}, or 2.8 in 10 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to ethylene oxide would result from the proposed use of the additive.

C. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of 1,4-dioxane and ethylene oxide as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which 1,4-dioxane and ethylene oxide may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper-bound limits of lifetime risk from exposure to these impurities, even under worst-case assumptions, are very low, less than 2.7 in 100 billion for 1,4-dioxane and less than 2.8 in 10 billion for ethylene oxide, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed use of the additive in adhesives is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before October 13, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch (HFS–247), to the Indirect Additives Branch (HFS–216), concerning FAP 3B4390—Petrolite Corp.—exposure to the food additive and its component (1,4-dioxane and ethylene oxide), November 5, 1993.

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology,'' in ''Chemical Safety Regulation and Compliance,'' edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. ''Bioassay of 1,4–Dioxane for Possible Carcinogenicity,'' National Cancer Institute, NCI–CG–TR–80, 1978.

4. Memorandum, Report of the Quantitative Risk Assessment Committee, June 30, 1994.

5. Dunkelberg, H., ''Carcinogenicity of Ethylene Oxide and 1,2–Propylene Oxide Upon Intragastric Administration to Rats,'' *British Journal of Cancer*, 46:924, 1982.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding a new entry under the heading ''Substances'' to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * *	
Ethoxylated primary linear alcohols of greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000 (CAS Reg. No. 97953–22–5).	
* * * * *	

Dated: September 1, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–22637 Filed 9–12–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 510

New Animal Drugs; Change of Sponsor Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name of approved applications from Animal Sciences Division of Monsanto Co. to Protiva, A Unit of Monsanto Co.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Judith M. O'Haro, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION: Animal Sciences Division of Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63167, has informed FDA of a change of sponsor name to Protiva, A Unit of Monsanto Co. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for ''Animal Sciences Division of Monsanto Co.'' and by alphabetically adding a new entry for ''Protiva, A Unit of Monsanto Company,'' and in the table in paragraph (c)(2) in the entry for ''059945'' by removing the sponsor name ''Animal Sciences Division of Monsanto Co.'' and adding in its place ''Protiva, A Unit of Monsanto Company.''

Dated: September 1, 1995.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 95–22638 Filed 9–12–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 640

[FHWA Docket No. 95–19]

RIN 2125–AD62

Certification Acceptance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is adopting an interim policy for certification acceptance (CA) which modifies the current FHWA policy. The interim policy streamlines and simplifies the existing procedures for CA applications to be consistent with the new program provisions in sections such as 1016(f) and 1105(e) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914. The modifications simplify the current regulations by eliminating unnecessary and prescriptive requirements. The new policy will allow State highway agencies (SHAs) to use the CA alternate procedures to supplement the administrative flexibility provided in the ISTEA for non-Interstate projects.

DATES: This regulation is effective September 13, 1995. Written comments must be received on or before December 12, 1995.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–19, Federal Highway Administration, Room 4232, HCC–10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Marttila, Interstate and Program Support Branch, Federal-Aid and Design Division, Office of Engineering, (202) 366–4637, or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This interim final rule establishes the procedures to be followed by SHAs for the processing of transportation projects under CA. This document allows the timely use by SHAs of the simplified CA procedures. The mandatory requirement for evaluation of all areas under CA administration every four years is eliminated, however the revised regulation retains the general requirements of the FHWA's fundamental provisions of law in title 23, United States Code, with respect to the basic structure of the Federal-aid highway program. The requirement that the State's laws, regulations, directives, and standards must aim to comply with title 23, U.S.C., policies is also retained. In keeping with the streamlining effort, specific requirements of the States for CA, including reports, are deleted because title 23, U.S.C. requirements will be subject to periodic changes. The revised CA regulation provides that States may be requested to furnish reports and information at the discretion of the FHWA. All references to the Secondary Road Plan (SRP) and its limited-coverage State certification procedures are removed because the SRP program was eliminated under the ISTEA restructuring.

The CA procedures are not being completely eliminated because, even in light of the additional flexibility provided by the ISTEA, and in particular 23 U.S.C. 106, certain National Highway System (NHS) projects can still be handled under CA. Some of those projects were not given the additional flexibility provided by the ISTEA. In addition, some States continue to use CA notwithstanding the more flexible options available.

Section-by-Section Analysis

Section 640.101 Purpose

The statement of purpose remains unchanged.

Section 640.103 Definitions

The definition of ''secondary road plan'' is removed because the Federal-aid secondary road system has been repealed by the ISTEA.

The definition of ''State highway/transportation agency'' is added to include all departments, commissions, boards or officials charged with responsibility for highway construction. The meaning is the same as that given for ''State highway department'' in 23 U.S.C. 101.

The term ''transportation'' is added to the definition of ''State certification'' to conform to the definition of ''State highway/transportation agency.''

Section 640.105 Effect of Certification Acceptance

Paragraph (d) is revised to eliminate the listing of fundamental provisions of law in title 23, U.S.C. The listing has become outdated and is subject to periodic changes. This does not change the finding required in 23 U.S.C. 117 that Federal-aid projects under CA will be carried out in accordance with State laws, regulations, directives and standards which will accomplish the policies and objectives issued pursuant to title 23, U.S.C.

Section 640.107 Coverage

Paragraphs (a) and (c) are revised to conform to the language in the ISTEA and 23 U.S.C. 135, Statewide Planning, is added for the projects listed in paragraph (b) and excluded from coverage under CA.

Paragraph (d) is eliminated because it allowed a simplified CA application procedure based on evaluation of the State's operations and performance under the SRP which has been eliminated. The simplified procedure is not needed because the special rules in 23 U.S.C. 106, provided under the ISTEA, allow increased flexibility in approval of projects using Federal-aid funds on non-NHS projects, low-cost NHS projects, and 3R projects on the NHS.

Section 640.109 Requirements for Certification Acceptance

Paragraphs (a) and (b) are revised and combined into a new paragraph (a) to simplify and streamline reviews and to eliminate redundant or unnecessary requirements. The detailed list of title 23 requirements is eliminated and the itemized evaluation of a State's performance and resources, to be used to determine the State's capability to carry out project responsibilities, is replaced by a more flexible approach. The approach is based on process reviews and evaluations conducted as part of the overall FHWA evaluation of the State's performance and resources. Procedures to accept limited-coverage CA, based on an evaluation of operations and performance under an approved SRP, are eliminated because of the repeal of the secondary road system by the ISTEA and because the limited-coverage of projects is not necessary given the special rules provided for in the ISTEA which have replaced the need for CA of such projects.

Paragraph (c) is redesignated as paragraph (b).

Section 640.111 Content of State Certification

Paragraph (a) is revised to eliminate the procedures for limited-coverage State certification which are no longer applicable. Such certification is not necessary for non-NHS projects, low-cost NHS projects, and 3R projects on the NHS under the provisions of 23 U.S.C. 106.

Section 640.113 Procedures

The text is revised and rearranged to simplify and streamline the procedures and eliminate redundant and unnecessary requirements. The revision implements guidance issued by the FHWA for program oversight in conformance with the ISTEA provisions, giving greater flexibility to the administration of Federal-aid projects.

Paragraph (a) is eliminated as redundant and because its subject is covered in § 640.105(d). Paragraph (b) is redesignated as paragraph (a). Paragraph (c) is redesignated as paragraph (b) and the text revised to conform to current FHWA guidance on processing design exceptions for projects administered under CA. Paragraph (d) is redesignated as paragraph (c) and the information on project agreements is updated to the requirements in 23 CFR Part 630, subpart C. Paragraph (e) and Appendix A, referenced in paragraph (e), are eliminated because the listing in Appendix A is outdated and not all inclusive and because the reports required by Appendix A on Federal-aid projects are subject to periodic changes. Paragraph (f) is redesignated as paragraph (d) and the text is revised to conform to the ISTEA provision for acceptance of Federal-aid projects. Paragraph (g) is redesignated as paragraph (e) and the text revised to remove the requirement that the State submit the final voucher on a specific form known as ''FHWA 1447''.

Paragraph (h) is redesignated as paragraph (f).

Section 640.115 Evaluations

Paragraphs (a) and (b) are revised to provide more flexibility in administering the CA procedures, in keeping with the spirit of ISTEA and recommendations made in the 1993 report by the Office of Program Review, entitled ''Stewardship Under ISTEA Program Efficiencies.'' Paragraph (a) is revised to provide that evaluations will be periodic, on an ''as deemed appropriate' basis, rather than requiring evaluations at least once every 4 years.

Paragraph (b) retains the requirement that an evaluation report, with recommendations, be prepared when a State fails to comply with CA requirements. This evaluation report is retained to provide a means for determining whether acceptance of a State's certification should be rescinded.

Section 640.117 Rescission of State Certification

The text is not changed in this section.

Review Procedure

Based on an analysis of public comments received, the FHWA will reexamine its determination that this interim final rule is acceptable as the basis for CA and whether further change is warranted.

Rulemaking Analysis and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth below, the FHWA has determined that prior notice to the public on this action is unnecessary and contrary to the public interest.

The FHWA has determined that prior notice and opportunity for comment are unnecessary because the changes being adopted in this rulemaking involve streamlining and provide more administrative flexibility in the use of the regulation. This revision, as part of the government regulatory review effort, updates and simplifies the existing CA regulation. This rule provides a less burdensome system for gathering information from the States with respect to the CA process and provides more flexible reporting arrangements for States that are, at their option, participating in the CA program. The previous requirements for periodic reports are deleted. Instead, the States may be requested by the FHWA to furnish reports and information from time to time. Overall, the CA procedures are relaxed and do not impose any additional restrictions on the public.

The FHWA has also determined that prior notice and opportunity for comment would be contrary to the public interest. As noted earlier, the adoption of this interim final rule would allow a timely use by SHAs of the streamlined and simplified CA procedures. Through the streamlined process and simplified reporting requirements, States that have chosen to participate in the CA program can do so to administer their State highway programs more efficiently.

Furthermore, the FHWA has also determined that prior notice and opportunity for comment are not required under the Department of Transportation's Regulatory Policies and Procedures because it is not anticipated that such action will result in the receipt of useful information.

The APA, according to 5 U.S.C. 553(d)(3), also allows agencies, upon a finding of good cause, to make a rule effective immediately and avoid the 30-day delayed effective requirement. The FHWA has determined that good cause exists to make this rule effective upon publication because the rule streamlines the CA process and provides less prescriptive requirements for its use. Making this rule effective upon publication will enable the States to take advantage of the simplified procedures immediately. Moreover, it should be noted that participation by the States in the CA program is voluntary.

Nevertheless, public comment is solicited on this action. Comments received will be carefully considered in evaluating whether any change to this action is needed.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. As stated, this revised regulation merely streamlines and updates the current CA regulation by giving added flexibility to the States in their use of CA. It is anticipated that the economic impact of the rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA made this determination based on the fact that the interim final rule for CA is an update of a current regulation and will provide greater flexibility in using the CA alternate procedures in the administration of projects consistent with the provisions of ISTEA.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This rule does not impose additional costs or burdens on the States, including the likely source of funding for the States, nor does it affect the ability of the States to discharge traditional State government functions. The intent of this rule is to provide the States with additional administrative flexibility in the use of the regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 640

Government procurement, Grant programs-transportation, Highways and roads.

Issued on: September 5, 1995.

Rodney E. Slater,

Federal Highway Administrator.

For the reasons set out above, the FHWA amends chapter I of title 23, Code of Federal Regulations, by revising part 640 to read as set forth below.

PART 640—CERTIFICATION ACCEPTANCE

Sec.
640.101 Purpose.
640.103 Definitions.
640.105 Effect of certification acceptance.
640.107 Coverage.
640.109 Requirements for certification acceptance.
640.111 Content of State certification.
640.113 Procedures.
640.115 Evaluations.
640.117 Rescission of State certification.

Authority: 23 U.S.C. 101(e), 117, and 315; 49 CFR 1.48(b).

§ 640.101 Purpose.

The purpose of this part is to provide instructions for preparation and acceptance of State certification proposals to accomplish the policies and objectives of title 23, U.S.C., using State laws, regulations, directives, and standards. Also covered are procedures for administering projects under certification acceptance and evaluating State performance.

§ 640.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Certification acceptance (CA) means the alternative procedure authorized by 23 U.S.C. 117(a) for administering Federal-aid highway projects not on the Interstate System.

State certification means a written statement prepared by a State highway/transportation agency setting forth the laws, regulations, directives, and standards it will use, or cause to be used, in the administration of certain highway projects.

State highway/transportation agency has the same meaning as that given for *State highway department* in 23 U.S.C. 101.

§ 640.105 Effect of certification acceptance.

(a) Acceptance of a State certification permits a State to discharge certain responsibilities otherwise assigned to the Secretary under title 23, U.S.C., for Federal-aid highway projects. A State may permit performance and project certification by capable local governments.

(b) Acceptance of a State certification does not constitute a commitment or obligation of Federal funds.

(c) Acceptance of a State certification does not preclude FHWA access to and review of a Federal-aid project at any time.

(d) Certification acceptance as an alternative procedure does not replace the fundamental provisions of law in title 23, U.S.C., with respect to the basic structure of the Federal-aid highway program. Acceptance of a CA proposal does not preclude application of any provision of title 23, U.S.C., that may be advantageous to the State.

(e) Nothing in this part shall affect or discharge any responsibility or obligation of the FHWA under any Federal law other than title 23, U.S.C.

§ 640.107 Coverage.

(a) Certification acceptance may apply to Federal-aid highway projects except projects on the Interstate System. If other FHWA regulations and title 23, U.S.C., allow, projects not on a Federal-aid highway may be administered under the provisions of an accepted State certification.

(b) The CA procedure shall not apply to transportation planning and research (23 U.S.C. 134, 135, and 307), highway safety (chapter 4, title 23, U.S.C.), or those public transportation projects not administered by FHWA under title 23, U.S.C.

(c) A State certification may provide for either full or partial coverage of the Federal-aid highway projects, programs, phases of work, and classes of projects.

§ 640.109 Requirements for certification acceptance.

(a) Acceptance of either a full or partial coverage State certification as described in § 640.107(c) will be based upon:

(1) A State request and identification of the State laws, regulations, directives, and standards that either separately or collectively will accomplish the policies and objectives contained in or issued pursuant to title 23, U.S.C., and

(2) An FHWA finding that the State highway/transportation agency has the capability to carry out project responsibilities in accordance with such State requirements. The FHWA finding will be based on previous process reviews and evaluations conducted as part of FHWA's oversight of Federal-aid programs and an FHWA evaluation of the State's performance and resources. If information from process reviews and that available from previous evaluations are considered to be insufficient to form a reasonable judgment, they may be supplemented by additional reviews and inquiries of the State agency.

(b) A State certification may be accepted in whole or in part, depending on FHWA findings. Where minor deficiencies are found, acceptance may be conditioned or may exclude the affected State operations until the deficiencies are corrected. Where deficiencies are found which are of such magnitude as to create doubt that the policies and objectives of title 23, U.S.C., would be accomplished, the State certification will not be accepted until the deficiencies are corrected.

§ 640.111 Content of State certification.

(a) The State certification will include the following:

(1) The name of the State highway/transportation agency and the legal authority which permits such agency to accomplish the policies and objectives contained in or issued pursuant to title 23, U.S.C.;

(2) A statement of the programs, phases of work, and classes of projects or combinations thereof that the State is including in the certification being submitted for acceptance;

(3) For submissions providing full or partial coverage of projects as provided in § 640.107(c), a listing of the title 23, U.S.C., policies and objectives and citation of State laws, regulations, directives, and standards that will be applied. Any policies and objectives that are not applicable due to partial coverage may be omitted; and

(4) A description of the State's methods for assuring local government knowledge of and compliance with State and Federal requirements where they will perform services on projects administered under CA.

(b) Existing assurances and formal agreements between the State and the FHWA with respect to equal employment opportunity, current billing, and control of outdoor advertising will continue in full force and effect and may be incorporated by reference. Likewise, the State's procedures accepted under 23 U.S.C. 109(h) may be incorporated by reference.

(c) State certifications are to be signed by the chief official of the State highway/transportation agency and submitted to the FHWA Division Administrator.

§ 640.113 Procedures.

(a) Authorization by the FHWA to proceed with work on a CA project will be in response to a written request from the State highway/transportation agency.

(b) If the State finds that exceptions to CA procedures or standards are appropriate on a project, the State will justify and document such decisions.

(c) A project agreement, or modification to a project agreement, will be executed as required by 23 CFR Part 630, subpart C, Project Agreements.

(d) The FHWA may accept projects based on inspections of a type and frequency necessary to ensure the projects are completed in accordance

with appropriate standards. The State is to notify the FHWA when a project is complete and/or ready for such inspection.

(e) Final vouchers will be submitted to the FHWA with the State certifying that the plans, design, and construction for the project were in accord with the laws, regulations, directives, and standards contained in the State certification or such project exceptions as were approved by the FHWA.

(f) Revisions or amendments to State certifications will be made when necessary and processed as provided in § 640.111(c). The existing State certification is to be reviewed periodically to determine its adequacy in light of this part, the statutes in effect at the time of the review, and the operational reviews made by FHWA.

§ 640.115 Evaluations.

(a) The FHWA may conduct periodic evaluations, as deemed appropriate, of the State's operations under CA. These evaluations may include coverage of any or all areas of the State's administration of CA projects.

(b) If a failure to comply with Federal or State laws occurs and the State is unable or unwilling to effect corrective action of the deficiency, an evaluation report, including recommendations, will be prepared by the FHWA as a basis for considering whether acceptance of the State certification should be rescinded under § 640.117.

§ 640.117 Rescission of State certification.

The acceptance of a State certification may be rescinded at any time upon request of the State or if considered necessary by the FHWA to protect the Federal interest. The rescission may be applied to all or part of the programs or projects covered in the State certification.

[FR Doc. 95–22583 Filed 9–12–95; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act (FLSA), minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. This document puts into effect the minimum wage rates recommended for various industry categories by Industry Committee No. 21, which met in Pago Pago, American Samoa during the week of June 12, 1995. The new minimum wage rates are effective 15 days after their publication in the **Federal Register.**

EFFECTIVE DATE: This rule is effective on September 28, 1995.

FOR FURTHER INFORMATION CONTACT:

Daniel F. Sweeney, Deputy Assistant Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3028, Washington, DC 20210; telephone: (202) 219–8353. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

There are no reporting or recordkeeping requirements contained in this rule.

II. Background

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064), as amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., P. 1004), and by means of Administrative Order No. 662 (60 FR 19099), the Secretary of Labor appointed and convened Industry Committee No. 21 for Industries in American Samoa, referred to the Committee the question of the minimum rates of wages to be paid under section 8 of FLSA to employees within the industries, and gave notice of a hearing to be held by the Committee.

As required by the Secretary's notice, Industry Committee No. 21 conducted an investigation and hearing in Pago Pago, American Samoa during the week of June 12, 1995. Subsequently, the Committee filed with the Administrator of the Wage and Hour Division a report, dated June 19, 1995, containing its findings of fact and recommendations with respect to minimum wages for various industry classifications.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950 and 29 CFR 511.18, this rule revises §§ 697.1 and 697.3 of 29 CFR Part 697 to implement the recommendations of Industry Committee No. 21.

Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, and no regulatory impact analysis is required. This document puts into effect the wage rates recommended by Industry Committee No. 21 that met in Pago Pago, American Samoa during the week of June 12, 1995. The Committee recommended increases in various industry categories, ranging from 5 cents per hour for fish canning and processing and can manufacturing, the largest private industry in American Samoa, the 35 cents per hour, in two steps, in finance and insurance and private hospitals and educational institutions. When these increases are fully implemented, wage rates will range from $2.45 an hour (government and miscellaneous industries) to $3.75 an hour, shipping and transportation, classification A (stevedoring, lighterage, and maritime shipping agency). There are approximately 16,000 employees in the various industry classifications. Based on the number of workers whose wages must be increased to the new minimum wage levels in 1995 and/or 1996, and assuming that employees currently paid at or in excess of the new minimum wages will also receive commensurate wage increases to maintain relative pay comparability, increases in the overall annual wage bill are expected to be modest—approximately $7 million in 1995 and $5 million in 1996. Thus, this rule is not expected to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

For similar reasons, the rule does not require a § 202 statement under the Unfunded Mandates Reform Act of 1995. In this regard, wage order procedures under 29 CFR Part 511 require residents of American Samoa to be included in the composition of any industry committee. Individuals are

nominated by the American Samoa government to serve of committees and its representatives also provide testimony and make commendations at hearing proceedings.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq*. pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects on 29 CFR Part 697

Minimum wages, American Samoa.

Promulgation of Final Rule

Because, under sections 5, 6, and 8 of the Fair Labor Standards Act and 29 CFR 511.18, the Department has no authority to approve or modify the rates recommended by the industry committee, the Department finds, pursuant to 5 U.S.C. 553.(b)(3)(B), that notice and public comment thereon under the Administrative Procedure Act are not necessary.

Accordingly, Part 697 of Chapter V of Title 29, *Code of Federal Regulations* is amended as set forth below.

Signed at Washington, D.C. this 31st day of August, 1995.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 697—INDUSTRIES IN AMERICAN SAMOA

1. The authority citation for Part 697 continues to read as follows:

Authority: Secs. 5, 6, 8, 52 Stat. 1062, 1064; 29 U.S.C. 205, 206, 208.

2. Section 697.1 is amended by revising paragraphs (a)(1), (b)(1), (b)(2)(ii), (b)(2)(iii), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), and (n)(1) to read as follows:

§ 697.1 Wage rates and industry definitions.

* * * * *

(a) *Fish canning and processing and can manufacturing industry*. (1) The minimum wage for this industry is $3.10 an hour effective July 1, 1996.

* * * * *

(b) *Shipping and transportation industry*. (1) The minimum wage for classification A, stevedoring, lighterage and maritime shipping agency activities, is $3.65 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.75 an hour effective July 1, 1996. The minimum wage for classification B, unloading of fish, is $3.60 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.70 an hour effective July 1, 1996. The minimum wage for classification C, all other activities, is $3.50 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.62 an hour effective July 1, 1996.

(2) * * *

(ii) *Classification B: Unloading of fish*. This classification shall include the unloading of raw and/or frozen fish from vessels.

(iii) *Classification C: All other activities*. All other activities in the shipping and transportation industry.

(c) *Tour and travel service industry*. (1) The minimum wage for this industry is $3.00 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.10 an hour effective July 1, 1996.

* * * * *

(d) *Petroleum marketing industry*. (1) The minimum wage for this industry is $3.45 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.55 an hour effective July 1, 1996.

* * * * *

(e) *Construction industry*. (1) The minimum wage for this industry is $3.05 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.20 an hour effective July 1, 1996.

* * * * *

(f) *Hotel industry*. (1) The minimum wage for this industry is $2.45 an hour effective on September 28, 1995, the date specified in § 697.3; and $2.60 an hour effective July 1, 1996.

* * * * *

(g) *Retailing, wholesaling, and warehousing industry*. (1) The minimum wage for this industry is $2.70 an hour effective on September 28, 1995, the date specified in § 697.3; and $2.80 an hour effective July 1, 1996.

* * * * *

(h) *Ship maintenance industry*. (1) The minimum wage for this industry is $3.00 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.10 an hour effective July 1, 1996.

* * * * *

(i) *Bottling, brewing, and dairy products industry*. (1) The minimum wage for this industry is $2.85 an hour effective on September 28, 1995, the date specified in § 697.3; and $2.95 an hour effective July 1, 1996.

* * * * *

(j) *Printing and publishing industry*. (1) The minimum wage for this industry is $3.05 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.20 an hour effective July 1, 1996.

* * * * *

(k) *Finance and insurance industry*. (1) The minimum wage for this industry is $3.45 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.60 an hour effective July 1, 1996.

* * * * *

(l) *Private hospitals and educational institutions*. (1) The minimum wage for this industry is $3.00 an hour effective on September 28, 1995, the date specified in § 697.3; and $3.10 an hour effective July 1, 1996.

* * * * *

(m) *Government employees industry*. (1) The minimum wage for this industry is $2.45 an hour effective October 1, 1996.

* * * * *

(n) *Miscellaneous activities industry*. (1) The minimum wage for this industry is $2.35 an hour effective on September 28, 1995, the dated specified in § 697.3; and $2.45 an hour effective July 1, 1996.

* * * * *

3. Section 697.3 is revised to read as follows:

§ 697.3 Effective dates.

The wage rates specified in § 697.1 shall be effective on September 28, 1995, except as otherwise specified.

[FR Doc. 95–22138 Filed 9–12–95; 8:45 am]

BILLING CODE 4510–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[WI56–01–7019a; FRL–5289–3]

Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: In this action USEPA is removing all total suspended particulate (TSP) area designations in the State of Wisconsin. This direct final action was prompted by the Wisconsin Department of Natural Resources' (WDNR) April 20, 1994 request to redesignate portions of the cities of Brokaw, Green Bay, Kenosha, Madison, Manitowac, Marshfield, Milwaukee, Oshkosh,

Racine, Superior and Waukesha from secondary TSP nonattainment to attainment or unclassifiable for PM. On June 3, 1993 (58 FR 31622), USEPA published a final rule revising the prevention of significant deterioration (PSD) particulate matter increments, which became effective on June 4, 1994, so that the increments are measured in terms of particulate matter with an aerodynamic diameter less than 10 microns (PM). Section 107(d)(4)(B) of the Clean Air Act (Act) authorizes USEPA to eliminate all area TSP designations once the increments for PM are promulgated. The June 3, 1993 action also established the method by which USEPA deletes such TSP designations.

EFFECTIVE DATE: This final rule is effective November 13, 1995, unless USEPA receives adverse or critical comments by October 13, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: (It is recommended that you telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

Background

In 1971, USEPA promulgated primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter to be measured as TSP. On July 1, 1987 (52 FR 242634), USEPA revised the NAAQS for particulate matter, replacing the TSP indicator with the PM indicator. On the same date, USEPA promulgated final regulations under 40 CFR part 51 for State implementation of the revised NAAQS (52 FR 24672). In the preamble to that action, USEPA announced that, because of the importance of the section 107 area designations to the applicability of the TSP increments, it would retain the TSP designations beyond the date on which USEPA approves a State's revised PM State Implementation Plan (SIP). This would protect the applicability of the TSP increments until a PM increment system could be established.

The 1990 Amendments to the Act contained several pertinent provisions relating to or affecting the TSP area designations. Under section 107(d)(4)(B) of the amended Act, Congress established by operation of law the first nonattainment area designations for PM, and mandated that areas not initially defined as nonattainment are considered to be unclassifiable. The entire State of Wisconsin was designated unclassifiable for PM under the 1990 Amendments to the Act. Moreover, section 107(d)(4)(B) provided that any designation for particulate matter (measured in terms of TSP) that the Administrator promulgated prior to the date of enactment of the 1990 Amendments shall remain in effect for purposes of implementing the maximum allowable concentrations of particulate matter (measured in terms of TSP) increments until the Administrator determines that such designation is no longer necessary for that purpose.

On June 3, 1993 (58 FR 31622), under the authority of section 166(f) of the Act, USEPA published the final rulemaking replacing the TSP increments with equivalent PM increments. As a result, the PSD increments and NAAQS will be measured by the same indicator. As stated at 58 FR 31635, for States already having delegated authority to implement the Federal PSD regulations ''USEPA will eliminate the TSP designations when the PM increments become effective under § 52.21 on June 3, 1994.'' The USEPA has delegated to the State of Wisconsin the authority to implement the PSD program. The delegation agreement provides for automatic adoption of the revised PM increments once the increments become effective. In addition, USEPA approved the State's PM rules as a revision to the Wisconsin SIP on June 28, 1993 (58 FR 34528).

As suggested above, because the revised Act sets out the narrow purpose of maintaining the TSP designations only until promulgation of the PM increments, USEPA believes it is not required to examine the TSP air quality considerations of a TSP redesignation. However, there may be other air quality implications, especially PM impacts, which follow not from a TSP redesignation, but from a revision to existing TSP requirements. Sections 110(l) and 193 of the Act contain very specific restrictions on modifications or revisions to applicable implementation plans that may interfere with requirements of the Act or result in relaxations of control requirements. If the applicable TSP plan for the area has provisions which result in the automatic relaxation of control requirements upon the deletion of the area designations for TSP, then any such deletion should not be approved unless, consistent with section 193, such modification is accompanied with at least equivalent emission reductions. Similarly, if the applicable TSP implementation plan automatically is modified upon the deletion of the area designations for TSP, then any such deletion should not be approved unless such modification is accompanied with a demonstration that the revision does not interfere with requirements of the Act. The USEPA's technical support document dated May 25, 1995 discusses how the modifications and the TSP plan revision automatically occurring upon the deletion of the TSP designations will not interfere with any requirement of the Act, such as maintenance of the PM NAAQS, and will not result in an increase in particulate matter emissions.

Final Action

Because TSP designations are no longer necessary and Wisconsin has already been designated as unclassifiable for PM, USEPA is taking action to delete all TSP area designations in the State of Wisconsin. The Agency believes that this is administratively more efficient than redesignating the TSP secondary nonattainment areas to attainment.

Miscellaneous

Comment and Approval Procedure

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on November 13, 1995, unless USEPA receives adverse or critical comments by October 13, 1995.

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on November 13, 1995.

Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or

establishing a precedent for any future request for revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Executive Order 12866

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. Sections 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This approval does not create any new requirements.

Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (1976).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 17, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 81.350 [Amended]

2. In § 81.350 the table entitled ''Wisconsin-TSP'' is removed.

[FR Doc. 95–22620 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 4F4389/R2163; FRL–4973–3]

RIN 2070–AB78

CryIA(c) and CryIC Derived Delta Endotoxins of Bacillus Thuringiensis Encapsulated in Killed Pseudomonas Fluorescens; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of CryIA(c) and CryIC derived *Pseudomonas fluorescens* (MATTCH Biosecticide) in or on all raw agricultural commodities. Mycogen Corp. submitted a request for an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of this pesticide in or on all raw agricultural commodities.

EFFECTIVE DATE: Effective on September 13, 1995.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 4F4389/R2163], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St. SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (tolerance fees) P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in

electronic form must be identified by the docket number [PP 4F4389/R2163]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Willie H. Nelson, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: 5th Floor, CS #1, 2800 Crystal Drive, Arlington, VA 22202, 703-308-8715; e-mail: nelson.willie @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 17, 1995, EPA issued a notice that Mycogen Corp., 4980 Carroll Canyon Rd., San Diego, CA 92121, had submitted a pesticide petition (PP 4F4389) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish an exemption from the requirement of a tolerance for a blend of CryIA(c) and CryIC derived delta-endotoxins of pesticide *Bacillus thuringiensis* encapsulated in killed *Pseudomonas fluorescens* for all raw agricultural commodities (RAC's) when used in accordance with good agricultural practices.

There were no adverse comments or requests for referral to an advisory committee received in response to the notice of filing of the pesticide petition, PP 4F4389.

Product Analysis

Mycogen Corp. submitted information which adequately described its product (MATTCH). This product consists of a maxture of two lepidopteran active toxins derived from naturally occurring delta endotoxins as found in *Bacillus thuringiensis*. Delta endotoxins active against lepidopteran species are formed as protoxins that are activated in the alkaline gut environment of the insect. The active toxins in this product are referred to by Mycogen Corp. as CryIA(c) and CryIC due to their amino acid sequence similarity to these toxins. The protoxin portion of these derived toxins comes from another CryI protein. These are produced in *Pseudomonas fluorescens*.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include the following: an acute oral toxicity/pathogenicity study, an *in-vitro* digestibility study, and abridged data from Mycogen's previously registered MVP product.

Toxicology Assessment

The toxicology data provided are sufficient to demonstrate that there are no foreseeable human health hazards likely to arise from the use of CryIA(c) and CryIC derived delta-endotoxins of *Bacillus thuringiensis* encapsulated in killed *Pseudomonas fluorescens*.

Mycogen's data on potential health effects include information on the characterization of the expressed CryIA(c) and CryIC derived delta-endotoxin, the acute oral toxicity, and the *in vitro* digestibility of the delta-endotoxin. No potential health effects are expected from the use of this product.

Toxicity

The Agency expects that proteins with no significant amino acid homology to known mammalian protein toxins and which are readily inactivated by heat or mild acidic conditions would also be readily degraded in an *in vitro* digestibility assay and have little likelihood of displaying oral toxicity in laboratory rodents.

Mycogen's data support the prediction that the CryIA(c) and CryIC proteins would be nontoxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology*, 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high dose levels, the CryIA(c) and CryIC delta-endotoxins are not considered acutely or chronically toxic. In addition, the *in vitro* digestibility studies indicate the delta-endotoxin would be rapidly degraded following ingestion.

Despite decades of widespread use of *Bacillus thuringiensis* as a pesticide (it has been registered since 1961), there have been no confirmed reports of immediate or delayed allergic reactions to the delta-endotoxin itself despite significant oral, dermal, and inhalation exposure to the microbial product. Several reports under FIFRA section 6(a)2 have been made for various *Bacillus thuringiensis* products with allergic reactions being reported. However, these reactions were determined not to be due to *Bacillus thuringiensis* itself or any of the Cry toxins.

Residue Chemistry Data

Residue chemistry data were not required because of the lack of mammalian toxicity of this active ingredient. In the acute mouse oral toxicity study, the CryIC delta-endotoxin was shown to have an LD_{50} greater than 5,050 mg/kg. When proteins are toxic they are known to act via acute mechanisms and at very low dose levels [Sjobald, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology*, 15, 3-9 (1992)]. Therefore, since no significant acute effects were observed, even at relatively high dose levels, the CryIC delta-endotoxin is not considered acutely or chronically toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial Bacillus thuringiensis products from which this plant pesticide was derived. (See 40 CFR 158.740(b)). For microbial products, further toxicity testing to verify the observed effects and clarify the source of the effects (Tiers II, III) and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study.

Conclusions

Based on the information considered, the Agency concludes that establishment of a tolerance is not necessary to protect the public health. Therefore, the exemption from the requirement of a tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rule making. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, a summary of any evidence relied upon by the objector as well as the other materials required by 40 CFR 178.27. A request for a hearing will be granted if

the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims of facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

A record has been established for this rulemaking under docket number [PP 4F4389/R2163] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 4F4389/R2163], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 1995.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, by adding new § 180.1154, to read as follows:

§ 180.1154 CryIA(c) and CryIC derived Delta-Endotoxins of Bacillus thuringiensis var. kurstaki Encapsulated in killed Pseudomonas fluorescens, and the expression plasmid and cloning vector genetic constructs.

CryIA(c) and CryIC derived delta-endotoxins of *Bacillus thuringiensis* var. *kurstaki* encapsulated in killed *Pseudomonas fluorescens* and the expression plasmid and cloning vector genetic constructs are exempt from the requirement of a tolerance when used in or on all raw agricultural commodities.

[FR Doc. 95–22617 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 300

[FRL–5294–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Jackson Township Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces the deletion of the Jackson Township Landfill Superfund site (Site) in Ocean County, New Jersey from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR Part 300, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey have determined that all appropriate Fund-financed responses under CERCLA have been implemented at the Site and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of New Jersey have determined that remedial actions conducted at the Site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 13, 1995.

ADDRESSES: Comprehensive information on this site is available at the following addresses:

Jackson Township Municipal Complex, RD#4, Box 1000, Jackson, NJ 08527, Phone: (908) 928–1200

Ocean County Library, 101 Washington Street, Toms River, NJ 08753, Phone: (908) 349–6200.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Gowers, Remedial Project Manager, U.S. Environmental Protection

Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4413.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Jackson Township Landfill Site in Ocean County, New Jersey.

A Notice of Intent to Delete for this site was published April 26, 1995 (60 FR 20473). The closing date for comments on the Notice of Intent to Delete was May 26, 1995. EPA received no comments and therefore has not prepared a Responsiveness Summary.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund)—financed remedial actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous substances, Hazardous waste, Intergovernmental relations.

Dated: May 21, 1995.

William J. Muszynski,

Acting Regional Administrator.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp. p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the ''entry for Jackson Township Landfill Site'' in Ocean County, New Jersey.

[FR Doc. 95–22489 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–25; RM–8588, RM–8633]

Radio Broadcasting Services; Waldport and Depoe Bay, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denies the request of Jarvis Communications, Inc. to allot Channel 288A to Waldport, Oregon, as the community's first local FM service. *See* 60 FR 10533, February 27, 1995. The Commission grants the request of Ginna Jones to allot Channel 288A to Depoe Bay, Oregon, as its first local FM service. Channel 288A can be allotted to Depoe Bay in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 44–48–42 North Latitude and 124–03–42 West Longitude. With this action, this proceeding is terminated.

DATES: Effective October 23, 1995. The window period for filing applications will open on October 23, 1995, and close on November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–25, adopted August 31, 1995, and released September 8, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Depoe Bay, Channel 288A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–22785 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[BC Docket No. 79–269; RM–3392, RM–3398]

Television Broadcasting Service; Syracuse, New York; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the Television Table of Allotments as published in the October 1, 1994, revision of 47 CFR part 73. The listing for Syracuse, New York, in § 73.606(b) incorrectly shows Channel 62 + instead of Channel 68 −. Channel 68 − was substituted for Channel 62 + at Syracuse pursuant to the *Second Report and Order,* BC Docket No. 79–269, 49 FR 21931, May 24, 1984.

EFFECTIVE DATE: September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION:

Background

Channel 68 − was substituted for Channel 26 + at Syracuse, NY, and Channel 62 was substituted for Channel 63 at Kingston, New York, in order to allot Channel 63 to Newton, New Jersey.

Need for Correction

As published, the final regulation contains a wrong channel allotment at Syracuse, NY, which is misleading and needs correction.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—RADIO BROADCAST SERVICES

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under New York, is amended by removing Channel 62 + and adding Channel 68 − at Syracuse.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22786 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 923 and 970

RIN 1991–AB05

Acquisition Regulation; Acquisition and Use of Environmentally Preferable Products and Services

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends the Department of Energy Acquisition Regulation (DEAR) to provide for the acquisition and use of environmentally preferable products and services.

EFFECTIVE DATE: October 13, 1995.

FOR FURTHER INFORMATION CONTACT: P. Devers Weaver, Office of Policy (HR–51), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; telephone 202–586–8250.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A proposed rule was published in the January 11, 1995, **Federal Register** at 60 FR 2727. It proposed to amend the DEAR to provide a contract clause, Acquisition and Use of Environmentally Preferable Products and Services. The clause is to be incorporated in DOE management and operating contracts to promote the acquisition and use of environmentally preferable products and services, in accordance with specified Department of Energy and other Federal policies.

Subparagraph (a)(3) of the clause Acquisition and Use of Environmentally Preferable Products and Services (DEAR 970.5204–39) has been amended to reflect the May 1, 1995, Environmental Protection Agency rule at 40 CFR Part 247 (60 FR 21370) which superseded prior Part 247 and removed 40 CFR Parts 248, 249, 250, 252, and 253.

We note an amendment to the Federal Acquisition Regulation (FAR) covering environmentally preferable products published in the May 31, 1995, **Federal Register** (60 FR 28492). The FAR coverage addresses Federal policy and contract clauses involving environmentally preferable products. Today's rule is consistent with the FAR and supplements the FAR with requirements that meet needs that are unique to DOE management and operating contracts.

II. Disposition of Comments

Comments, due by March 13, 1995, were received from two organizations. One was a DOE field organization and one was an industrial firm in the private sector.

One comment suggests that DOE should delay finalization of the proposed rule until the Environmental Protection Agency (EPA) publishes further guidelines for the procurement of products containing recovered materials, pursuant to Executive Order 12873 of October 20, 1993, entitled ''Federal Acquisition Recycling and Waste Prevention.'' These new EPA guidelines, according to the commenter, would evaluate products based upon multiple attributes, such as energy consumption in the manufacture of recycled products, rather than on the single factor of being made from recycled contents.

DOE has adopted EPA guidelines for the acquisition and use of products containing recovered materials (10 CFR Parts 247–253) based on the expertise of the EPA in environmental matters. The contract clause which is the subject of this rule requires DOE management and operating contractors to comply with the requirements of the DOE ''Affirmative Procurement Program for Products Containing Recovered Materials'' (APP). The APP will be periodically updated to account for changes in EPA guidelines. Therefore, DOE will incorporate future changes in published EPA guidelines and does not need to further delay publication of this rule to accommodate this comment.

Another comment asked that subparagraph (a)(4) of the proposed clause at 970.5204–39, Acquisition and Use of Environmentally Preferable Products and Services, be amended by adding the words ''and provided to the contractor by the Contracting Officer for implementation'' at the end of the subparagraph, to ensure that a contractor is aware of the existence of guidance documents. The proposed clause provides that a contractor shall comply with requirements in the document ''U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials,'' and related guidance documents as they are identified in writing by the contracting officer. It is necessary for DOE to identify the documents with which a management and operating contractor is to comply, but this does not require that the document be provided by the contracting officer. (As a practical matter, DOE program officials will often provide the contractor with the relevant guidance documents.) The clause is not being amended.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993). Accordingly this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Subpart D of 10 CFR Part 1021, National Environmental Policy Act Implementing Procedures, the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment. This rule establishes a clause and practices for the purchase of goods and services and does not require preparation of an environmental impact statement or an environmental assessment under categorical exclusion A6 of Subpart D.

C. Review Under the Paperwork Reduction Act

To the extent that new information collection or recordkeeping requirements are imposed by this rulemaking, they are provided for under Office of Management and Budget paperwork clearance package No. 1910–0300.

D. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

E. Review Under Executive Order 12612

Executive Order 12612 entitled ''Federalism,'' 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department of Energy has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that this rule meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 48 CFR Parts 923 and 970

Government procurement.

Issued in Washington, D.C. on Sept. 7, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

1. The authority citation for Part 923 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. New subpart 923.4 is added as follows:

Subpart 923.4—Use of Recovered Materials

923.471 Policy.

The DOE policy is to acquire items composed of the highest percentage of recovered/recycled materials practicable (consistent with published minimum content standards), without adversely affecting performance requirements; consistent with maintaining a satisfactory level of competition; and consistent with maintaining cost effectiveness and not having a price premium paid for products containing recovered/recycled materials.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

3. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

4. Section 970.2304 is added to read as follows:

970.2304 Use of Recovered/Recycled Materials.

970.2304–1 General.

The policy for the acquisition and use of environmentally preferable products and services is described at 48 CFR (DEAR) subpart 923.4.

970.2304–2 Contract clause.

The contracting officer shall insert the clause at 48 CFR (DEAR) 970.5204–39, Acquisition and Use of Environmentally Preferable Products and Services, in management and operating contracts.

5. To subpart 970.52 add section 970.5204–39 as follows:

970.5204–39 Acquisition and Use of Environmentally Preferable Products and Services.

As prescribed in 48 CFR (DEAR) 970.2304–2, insert the following clause in management and operating contracts.

ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (OCT 1995)

(a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:

(1) Executive Order 12873 of October 20, 1993, entitled ''Federal Acquisition, Recycling, and Waste Prevention,''

(2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. 94–580, 90 Stat. 2822),

(3) Title 40 of the Code of Federal Regulations, Subchapter I, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials,

(4) ''U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials'' and related guidance document(s), as they are identified in writing by the Department.

(b) The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction (e.g., in a specified format) from the Contracting Officer.

(c) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, who shall be identified by the Contracting Officer. Reports required pursuant to paragraph (b) of this clause, shall be submitted through the DOE recycling point of contact.

[FR Doc. 95–22754 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 090195B]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Inseason Adjustment, U.S.-Canadian Border to Carroll Island, WA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment.

SUMMARY: NMFS announces that the possession, landing, and delivery limit in the commercial salmon fishery in the area from the U.S.-Canadian border to Carroll Island, WA, was increased to 375 coho per opening beginning August 19, 1995. This adjustment is intended to provide additional fishing opportunity to commercial fishermen.

DATES: Effective 0001 hours local time, August 19, 1995, through September 15, 1995. Comments will be accepted through September 27, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: In the annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), NMFS announced that the 1995 commercial fishery in the area between the U.S.-Canadian border and Carroll Island, WA, would open on August 5 and fishing would follow a cycle of 4 days open and 3 days closed. The fishery would close the earliest of September 15, attainment of the adjusted 25,000 coho salmon quota (60 FR 40302, August 8, 1995), or attainment of the 160,000 pink salmon guideline. Each vessel would be able to possess, land, and deliver no more than 80 coho per open period; this limit was adjusted to 200 coho per open period effective August 12 (60 FR 43984, August 24, 1995).

The best available information on August 17 indicated that commercial catches through August 15 totaled 9,900 coho salmon and 23,100 pink salmon. The preseason objective for the possession, landing, and delivery limit was to provide commercial fishermen a minimal allowance for coho salmon while providing access to pink salmon. Pink salmon are currently available in the fishery. Increasing the possession, landing, and delivery limit to 375 coho salmon per opening would provide additional fishing opportunity to commercial fishermen by increasing access to coho salmon without exceeding the ocean share allocated to the commercial fishery in this area.

Modification of limited retention regulations is authorized by regulations at 50 CFR 661.21(b)(1)(ii). All other restrictions that apply to this fishery remain in effect as announced in the annual management measures.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fish and Wildlife regarding this adjustment. The State of Washington will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, August 19, 1995, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to provide commercial fishermen with additional fishing opportunity, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22700 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 661

[Docket No. 950426116–5116–01; I.D. 090195D]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Closure From Humbug Mountain, OR, to Horse Mountain, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the recreational salmon fishery in the area from Humbug Mountain, OR, to Horse Mountain, CA, was closed at midnight, August 18, 1995, because the recreational quota of 900 chinook salmon for the area had been reached. This action is necessary to conform to the preseason announcement of the 1995 management measures and is intended to ensure conservation of chinook salmon.

DATES: Effective at 2400 hours local time, August 18, 1995, through August 31, 1995. Comments will be accepted through September 27, 1995.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140, or Rodney R. McInnis, 310–980–4030.

SUPPLEMENTARY INFORMATION: Under regulations at 50 CFR 661.21(a)(1), NMFS will close the commercial or recreational fishery for ocean salmon when the quota has been projected to have been reached.

In the annual management measures for ocean salmon fisheries (60 FR 21746, May 3, 1995), NMFS announced that the 1995 recreational fishery in the area between Humbug Mountain, OR, and Horse Mountain, CA, would open on August 16 and continue through August 31 or until attainment of the 900 chinook salmon quota, whichever occurred first.

The best available information on August 17 indicated that, based on the

recreational catch and effort levels for the first 2 days of the fishery, recreational fishing could take place for 3 days without exceeding the quota. A fourth day of fishing would greatly exceed the quota. Therefore, NMFS determined to close the fishery at midnight, August 18.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding this closure. The States of Oregon and California will manage the recreational fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 2400 hours local time, August 18, 1995, by telephone hotline number (206) 526–6667 and (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to conserve chinook salmon, NMFS has determined that good cause exists for this action to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22665 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 177
Wednesday, September 13, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This document requests comments, prior to the publication of a proposed rule, concerning how to streamline and simplify the procedures used to arrange the purchase and shipment of commodities under the Public Law 480, title I program.

DATES: Comments in response to this document should be received by November 13, 1995.

ADDRESSES: Comments should be sent to: Mary T. Chambliss, Deputy Administrator, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, room 4077, South Building, 14th and Independence, SW., Washington, DC. 20250–1031.

All comments will be available for public inspection during regular business hours in room 4549, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Foreign Agriculture Service, United States Department of Agriculture, 14th and Independence Avenue, SW, Washington, D.C. 20250–1033; telephone (202) 720–3664.

SUPPLEMENTARY INFORMATION: Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Pub. L. 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional credit terms. 7 U.S.C. 1701 *et seq.*

CCC seeks comments and recommendations from the public on any ways in which the Pub. L. 480, title I program could be simplified or streamlined. Comments could include suggestions about program regulations, purchase authorizations, commodity and freight invitations for bids, letters of credit, letters of commitment, the sales approval process (including Form FAS–359, ''Declaration of Sale''), ocean transportation (including Form CCC–106, ''Advice of Vessel Approval'') and any aspect of the program which could be improved.

Background

After CCC and the recipient country have signed a title I agreement, CCC issues a purchase authorization (''PA'') which establishes general specifications for the commodity to be purchased, sets the contracting and delivery periods, and establishes conditions for CCC's financing of the commodity and any authorized ocean transportation costs. The recipient country issues, upon CCC approval, public Invitations for Bids (IFB's) for commodities and ocean transportation. These IFB's contain the country's requirements including precise commodity specifications, delivery dates, and payment documents. Subsequently the importer and suppliers of commodities and ocean transportation enter into contracts based on these public IFB's.

After the contracts have been entered into, the importer causes a letter of credit to be opened through a U.S. bank in favor of the commodity supplier; and a separate letter of credit in favor of the supplier of ocean transportation when CCC is financing any part of the ocean transportation. CCC also issues to that bank a Letter of Commitment pursuant to which CCC will reimburse the bank for payments made, or drafts accepted, under the letter of credit. See 7 CFR 17.15. In this manner, the supplier receives payment from the bank upon presentation of required documentation. The bank sends the documents to a specified Federal Reserve Bank, which debits CCC's account and sends the documents to CCC for post-audit.

In addition to soliciting comments generally on the Pub. L. 480, title I program, CCC is interested in receiving specific comments on three questions. First, could the PA be eliminated and the relevant portions of the PA be incorporated into the financing regulations or the IFB's, as appropriate?

Second, because opening letters of credit can be time-consuming and costly for the importing country, should CCC simply pay the supplier directly for the commodity and ocean freight costs which are financed by CCC?

Finally, should CCC finance commodity contracts on a cost and freight basis, or a cost, insurance and freight basis, instead of requiring separate contracts for the commodity and the ocean transportation? Under these contracts the commodity supplier would be responsible for securing ocean transportation on U.S.-flag vessels as needed to meet the requirements of the Cargo Preference Act. In particular, comments are requested regarding the effect of such a change on small businesses, and on how CCC could identify the portion of the total offer price attributable to the commodity and that attributable to the ocean transportation. This is necessary to permit USDA to continue to perform price review on the commodity cost and provide the information necessary for the Maritime Administration to determine whether the U.S.-flag freight rate is ''fair and reasonable.''

CCC emphasizes that comments on any and all parts of the program are encouraged and that all comments will be carefully considered.

Signed at Washington, D.C. on July 17, 1995.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 95–22664 Filed 9–12–95; 8:45 am]
BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and 1046

[Docket No. AO–388–A9, et al.; DA–95–22]

Milk in the Carolina and Certain Other Marketing Areas; Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

7 CFR part	Marketing area	Docket No.
1005	Carolina	AO–388–A9
1006	Upper Florida	AO–356–A32
1007	Southeast	AO–366–A37
1011	Tennessee Valley .	AO–251–A40
1012	Tampa Bay	AO–347–A35
1013	Southeastern Florida.	AO–286–A42
1046	Louisville-Lexington-Evansville.	AO–123–A67

SUMMARY: On August 17, 1995, a notice of hearing was published in the **Federal Register** (60 FR 42815) advising the public of a hearing to be held on September 19, 1995, in Atlanta, Georgia, to consider proposed amendments to the Southeast Federal milk order. Since that time, two other proposals have been received to provide a transportation credit and a 20-cent Class I price increase in 7 southern Federal milk orders during the period of October 1995 through February 1996. The proposal is intended to assure these markets of an adequate supply of milk during a period of declining milk production in the southeastern United States. Proponents have indicated that they will ask for emergency consideration of these issues at the hearing.

DATES: The hearing will convene at 9:00 a.m. on September 19, 1995.

ADDRESSES: The hearing will be held at the Granada Suite Hotel, 1302 West Peachtree Street, Atlanta, Georgia 30309 (Tel: 800/548–5631).

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Granada Suite Hotel, 1302 West Peachtree Street, Atlanta, Georgia, beginning at 9:00 a.m., on September 19, 1995, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the aforementioned marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders. The proposed ''transportation credit'' falls into the category of services of marketwide benefit as described in § 8c(5)(J)(iii) of the Act. Accordingly, a hearing must be held on this issue no later than 90 days after receipt of the proposal.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to Proposals 4 and 5.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and 1046

Milk marketing orders.

The authority citation for 7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture. Proposed by Arkansas Dairy Cooperative, Associated Milk Producers, Inc., Carolina-Virginia Milk Producers Association, Inc., Cooperative Milk Producers, Inc., Florida Dairy Farmers Association, Inc., Mid-America Dairymen, Inc., and Tampa Independent Dairy Farmers Association, Inc:

Proposal No. 4: Amend 7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and 1046 for the months of October 1995 through February 1996 by adding a paragraph to Section 60 of each order that would read as follows:

§ 10XX.60 Handler's value of milk for computing uniform price.

* * * * *

(j) With respect to milk marketed on and after the effective date hereof through February 1996, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.9 cents per hundredweight for each 10 miles or fraction thereof, less any positive difference between the Class I differential applicable at the transferee plant less the Class I differential applicable at the transferor plant.

Proposal No. 5: Amend 7 CFR Parts 1005, 1006, 1007, 1011, 1012, 1013, and

1046 for the months of October 1995 through February 1996 by adding 20 cents per hundredweight to the Class I price.

Copies of this notice of hearing and the order regulating the aforesaid marketing areas may be procured from the Market Administrator, P.O. Box 1208, Norcross, GA 30091–1208 (Tel: 404/448–1194), the Market Administrator, P.O. Box 18030, Louisville, KY 40261–0030 (Tel: 502/499–0040) or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Dairy Division, Agricultural Marketing Service (Washington office); and the Offices of the Market Administrators for the orders involved in this proceeding. Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 8, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–22829 Filed 9–12–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE-RM–93–801]

Energy Conservation Program for Consumer Products: Proposed Rulemaking Regarding Energy Conservation Standards for Refrigerators, Refrigerators-Freezers, and Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Extension of comment period for proposed rulemaking and rescheduling of public hearing.

SUMMARY: In response to a request from the Association of Home Appliance Manufacturers (AHAM), the Department of Energy is rescheduling the public hearing and extending for thirty (30) days the comment period for the Proposed Rulemaking Regarding Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers. This notice announces that the public hearing scheduled for September 12 and 13, 1995 has been rescheduled to October 26, 1995.

DATES: Written comments on the Proposed Rulemaking must be received by November 2, 1995. The Department requests ten (10) copies of the written comments, and, if possible, a computer disk. The Department is currently using WordPerfect® 5.1.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on October 26, 1995. Requests to speak at the hearing must be received by the Department no later than 4 p.m., Thursday, October 5, 1995. Ten copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., Thursday, October 12, 1995.

The hearing will begin at 8:30 a.m. on October 26, 1995, and will be held at the U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue, SW., Washington, DC 20585. The length of each presentation is limited to twenty (20) minutes.

ADDRESSES: Written comments, oral statements, requests to speak at the hearing and requests for speaker lists are to be submitted to: Voluntary Home Energy Rating System Guidelines (Docket No. EE-RM–93–801), U.S. Department of Energy, Office of Codes and Standards, Buildings Division, EE–431, 1000 Independence Avenue, SW., Rm 1J–018, Washington, DC 20585, (202) 586–7574.

Copies of the *Technical Support Document: Energy Efficiency Standards for Consumer Products: Refrigerators, Refrigerator-Freezers, and Freezers* (TSD) may be obtained from: U.S. Department of Energy, Office of Codes and Standards, Appliance Division, EE–431, 1000 Independence Avenue, SW., Rm 1J–018, Washington, DC 20585, (202) 586–9127.

Copies of the TSD, transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Edward O. Pollock, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5778

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Department published a Notice of Proposed Rulemaking (NOPR) on July 25, 1995, entitled ''Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers'' (60 FR 37388). In a letter dated August 11, 1995, AHAM requested a postponement of the hearings and written comment deadline because of legislative proposals before Congress that may affect the scope of energy standards activities. The legislative situation should be clarified by or in October.

In the NOPR, the Department listed a number of issues where comments were specifically requested. To this list, the Department is adding the following:

- The effect of the proposed standards on competition in the marketplace. This includes, but is not limited to, the effect on small manufacturers, niche-market manufacturers, and manufacturers who may struggle financially.
- The effect of the proposed standards on manufacturer's product lines. Comments are not limited to these issues and the issues listed in the NOPR. Comments may address any issue related to the proposed rule.

Issued in Washington, D.C., September 8, 1995.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 95–22814 Filed 9–8–95; 4:25 pm]

BILLING CODE 6450–01–P

10 CFR Part 830

[Docket No. NE–RM–91–830]

RIN 1901–AA34

Nuclear Safety Management

10 CFR PART 834

[Docket No. EH–RM–93–834]

RIN 1901–AA38

Radiation Protection of the Public and the Environment

AGENCY: Department of Energy.

ACTION: Notice of corrections and extension of comment periods.

SUMMARY: On August 31, 1995, the Department of Energy (DOE) published a document (60 FR 45382) to reopen the comment periods with respect to the ongoing rulemakings concerning 10 CFR Parts 830 and 834. This document indicated that draft regulatory language and a discussion of the regulatory system under development would be available through the internet. An incorrect internet address, however, appeared in the document. The correct address is gopher://nattie.eh.doe.gov:2011/11/.Drafts. The document also incorrectly cited the DOE Standard that discusses hazard categories. The correct citation is DOE Standard 1027. In light of these corrections, DOE is extending the comment periods.

DATES: Written comments (11 copies) must be received by the Department on or before October 13, 1995.

ADDRESSES: Part 830: Written comments on Part 830 (11 copies) should be addressed to PART 830, Mr. Orin Pearson, U.S. Department of Energy, Office of Environment, Safety and Health, EH–10, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Part 834: Written comments on Part 834 (11 copies) should be addressed to PART 834, Mr. Andrew Wallo, U.S. Department of Energy, Office of Environment, Safety and Health, EH–412, 1000 Independence Avenue SW., Washington, D.C. 20585.

Internet: The draft regulatory language for Part 830 and for Part 834, as well as the draft discussion of the regulatory system under development, is available on the internet at gopher://nattie.eh.doe.gov:2011/11/.Drafts.

FOR FURTHER INFORMATION CONTACT:

Part 830: Mr. Richard Stark, U.S. Department of Energy, Office of Environment, Safety and Health, EH–31, 19901 Germantown Road, Germantown, Maryland 20874–1290, (301) 903–4407.

Part 834: Mr. Andrew Wallo, or Mr. Harold T. Peterson, Jr., U.S. Department of Energy, Office of Environment, Safety and Health, EH–412, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–2409, fax (202) 586–3915.

Written Comments: Ms. Andi Kasarsky, (202) 586–3012.

Issued in Washington, DC on September 7, 1995.

Douglas W. Smith,

Acting Deputy General Counsel For Energy Policy.

[FR Doc. 95–22626 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 2

[Docket No. 95–23]

RIN 1557–AB49

Sales of Credit Life Insurance

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to revise its regulation governing credit life insurance and the disposition of credit life insurance income. This proposal is another component of the OCC's Regulation Review Program to update and streamline OCC regulations and to reduce unnecessary regulatory costs and other burdens.

The proposal eliminates unnecessarily detailed provisions, reorganizes sections of the rule into a more helpful format, and refocuses the regulation to address areas presenting the greatest safety and soundness concerns.

DATES: Comments must be received by November 13, 1995.

ADDRESSES: Comments should be directed to: Docket 95–23, Communications Division, 250 E Street, SW, Washington, DC 20219, Fax (202)874–5274. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Stuart E. Feldstein, Senior Attorney, Legislative and Regulatory Activities, (202) 874–5090.

SUPPLEMENTARY INFORMATION: The OCC is proposing to revise 12 CFR part 2 as part of its Regulation Review Program. The goal of the Program is to eliminate provisions in the OCC's regulations that impose unnecessary regulatory burdens and do not contribute significantly to maintaining the safety and soundness of national banks or accomplishing the OCC's other statutory responsibilities. By simplifying and clarifying the regulation, the proposal is intended to better focus on the standards and principles to which national banks should adhere when they furnish credit life insurance to customers.

Background

The OCC issued a final rule to establish part 2 in 1977, 42 FR 48518 (September 23, 1977), to regulate the disposition of income from the sale of credit life insurance by national banks to loan customers of the bank. The regulation addressed the practice where employees, officers, directors, and principal shareholders, or their related interests, diverted income from the sale of credit life insurance to their benefit rather than to the bank. The OCC noted at the time that ''[T]he proposal was premised on the judgment that income earned from credit life insurance sales to bank customers by bank officers using bank premises and good will in the creation of bank assets (loans) should be credited to bank earnings rather than be paid directly to and retained by officers, directors or selected stockholders.'' *Id.*

The regulation also addressed a number of related safety and soundness concerns. For example, there is an inherent conflict of interest when a loan officer's receipt of commissions from the sale of credit life insurance is dependent on the volume of loans made. This prospect of financial reward based solely upon loan volume may induce loan officers to make financially unsound loans. *See also, First National Bank of La Marque* v. *Smith*, 610 F.2d 1258 (5th Cir. 1980) (''When loan officers are allowed to retain commissions, the prospect of personal financial gain is interjected into the lending decision.''). Additional safety and soundness concerns cited when the rule was adopted included: (1) that arrangements permitting employees, officers and directors to use bank premises and goodwill for personal profit were inimical to the trust and

confidence depositors place in financial institutions; (2) that the acquisition of a bank by investors who rely on the credit life insurance income to service their debt was inherently unsafe and unsound because it decreases their interest in running a profitable bank; and (3) that incentives to increase bank profits were diminished if money was distributed other than through dividends. *See,* 41 FR 29846 (July 20, 1976); 42 FR 48518 (September 23, 1977).

In 1982, the OCC amended part 2 to incorporate certain recommendations of the Federal Financial Institutions Examination Council. Among other things, these amendments clarified that bank officers and employees could participate in limited bonus and incentive plans notwithstanding the prohibition on receiving income derived from the sale of credit life insurance. The amendments also revised a provision permitting income from the sale of credit life insurance to be credited to a holding company affiliate of the bank by requiring the affiliate to ''reasonably compensate'' the bank for the use of its premises, personnel, and goodwill. 47 FR 31376 (July 20, 1982).

Proposal

The OCC is committed to safeguarding national banks from the inappropriate practices that gave rise to the promulgation of part 2, and is not proposing to diminish the fundamental standards reflected in the current rule. Rather, the proposal reduces the overly detailed format of the current rule, seeks comment on additional streamlining, and reorganizes the rule into more readable and understandable provisions that focus on the safety and soundness concerns and fiduciary principles that are the objectives of the regulation.

Section 2.1—Authority, Purpose, and Scope

The proposal removes current § 2.1 as unnecessary. The proposal adds an ''Authority, purpose, and scope'' section that briefly describes the objectives and scope of the regulation. The section also restates language in current § 2.6 relating to national bank authority to furnish credit life insurance under 12 U.S.C. 24 (Seventh). These revisions do not expand or otherwise modify the authority of national bank's to furnish credit life insurance under 12 U.S.C. 24 (Seventh).[1]

Section 2.2—Definitions

The definitions in current § 2.3 are amended to reflect minor wording changes. In addition, the OCC requests comment as to whether the scope of the definition of ''credit life insurance'' is appropriate.

Section 2.3—Distribution of Credit Life Insurance Income

The proposal also contains a simplified statement of the methods by which credit life insurance may be sold by national banks. The current regulation requires income derived from the sale of credit life insurance by national bank insiders to loan customers of the bank to be credited to the bank rather than to the bank insiders or entities in which they have a material interest. In connection with the initial Notice of Proposed Rulemaking in 1976, some commenters argued that certain state laws prohibited the assignment of commissions to the bank and, thus, contradicted the OCC's requirement to credit income from the sale of the credit life insurance to the bank. In response to this concern, current § 2.6 contains a list of OCC approved methods of distribution of credit life insurance income that are alternatives to the assignment of commissions to the bank. Section 2.6 also states that other methods satisfying the requirements of current § 2.4 are acceptable.

The current rule provides banks with some certainty about the types of methods that are acceptable. However, these examples do not appear to be needed as part of the regulation, and may, in practice, be unduly restrictive and confusing. Therefore, the OCC is proposing to remove the list of approved alternative methods and substitute a simple statement that the means of distribution of credit life insurance income must be consistent with the requirements and principles of proposed § 2.3.

These requirements include a provision that prohibits bank insiders from retaining commissions or other income from the sale of credit life insurance to loan customers of the bank, subject to certain exceptions for bonus and incentive plans.

In addition, the proposal also clarifies that it is unsafe and unsound for a director, officer, employee, or principal shareholder of a national bank, (*i.e.* a shareholder that directly or indirectly owns five percent or more of the bank's stock), or an entity in which any such person has an interest of five percent or more, involved in the sale of credit life insurance to bank loan customers to take advantage of that business opportunity for personal profit. This provision revises current § 2.4(a) to reinforce the core principle that income derived from the opportunity created by the bank should be credited to the bank.

The OCC requests commenters to address whether the five percent ownership test for a ''principal shareholder'' and for covered entities in which insiders have an interest is an appropriate level to use in these contexts, and, if not, what alternative percentages or more flexible standards would be appropriate. For example, the OCC notes that a ''principal shareholder'' for purposes of insider lending standards is defined with a ten percent voting stock ownership test. 12 CFR 215.2(m)(1).

The OCC also requests commenters to address whether the prohibition against the retention of income derived from the sale of credit life insurance should apply to sales of credit life insurance to loan customers of an affiliate bank.

Subject to various safeguards, the OCC permits national banks to share space and employees with entities other than depository institutions. *See* 42 FR 11924 (March 3, 1995) (Proposed revisions to part 7, the OCC's interpretive rulings.) In some instances, the bank and another entity that uses bank premises may share employees to sell products, which may include credit life insurance, to the bank's customers. To the extent these shared employees receive commissions from the sale of the credit life insurance, the arrangement arguably falls within the prohibitions contained in the current rule, as well as this proposal.

Possible solutions to this issue include a prohibition on commissions received from the sale of credit life insurance by bank employees to the bank's customers, a requirement that the bank be compensated in some fashion, and/or a standard excluding certain types of dual employees from the scope of part 2. The OCC is mindful of not placing impediments to multi-product arrangements that are beneficial to banks and bank customers and have not been the source of problems or abuses.

[1] *IBAA v. Heimann,* 613 F.2d 1164, (D.C. Cir. 1979), *cert. denied,* 449 U.S. 823 (1980) (upholding national bank authority to sell credit life insurance). *See also* examples of other OCC precedent on furnishing credit life insurance: Interpretive Letter No. 277 (December 21, 1983) reprinted at [1983–1984 Transfer Binder] Fed. Banking L. Rep. (CCH) P85,441 (credit life insurance permissible as an incidental power under 12 U.S.C. 24(Seventh)); Interpretive Letter No. 283 (March 16, 1984) reprinted at [1983–1984 Transfer Binder] Fed. Banking L. Rep. (CCH) P85,447 (sales of credit life and disability insurance as agent for the insurer or by other arrangement as an incidental power); Letter from James G. Orie, Attorney, OCC Law Department (January 28, 1987); Letter from Ford Barrett, Assistant Director, Legislative and Regulatory Analysis (December 13, 1984); Letter from Richard V. Fitzgerald, Director, Legal Advisory Services Division (May 12, 1980); Letter from Robert Bloom, First Deputy Comptroller for Policy (June 29, 1976); and Letter from Joe H. Selby, First Deputy Comptroller for Operations (June 30, 1976).

However, the OCC also must exercise effective oversight where legitimate safety and soundness concerns may arise.

The OCC therefore requests comment on the treatment and compensation of employees shared with a non-bank entity that sells credit life insurance to the bank's customers.

Section 2.4(b) of the current regulation, originally adopted in 1977, permits income from the sale of credit life insurance to be credited to a holding company affiliate of the bank or to a trust for the benefit of all bank shareholders. A subsequent amendment to part 2 in 1982 required the holding company affiliate or trust to pay ''reasonable compensation'' to the bank for the use of its personnel and premises. 47 FR 31376 (July 20, 1982).

The OCC requests comment on whether to retain these provisions in the final rule or whether they are no longer necessary or used. If commenters propose retaining these provisions, the OCC also requests comment on whether comparable provisions should apply to affiliates not in a holding company structure.

Section 2.4—Bonus and Incentive Plans

Current § 2.4(a) permits limited bonus and incentive arrangements for employees and officers, notwithstanding the general prohibition against paying insiders income derived from the sale of credit life insurance to loan customers. Under the current rule, bonus or incentive payments based on credit life insurance sales may be made not more frequently than quarterly, and may not exceed in any one year five percent of the recipient's annual salary or five percent of the average salary of all loan officers participating in the plan. The proposal retains this condition with some minor wording changes to make the provision simpler and more understandable.

The OCC is concerned, however, that these restrictions may be too rigid. Therefore, commenters are specifically asked to address whether this periodic payment standard and the two percentage limits are appropriate safeguards for bonus and incentive programs, and, if not, what alternative safeguards the OCC should adopt that would deter inappropriate sales activities by insiders in connection with the sale of credit life insurance.

The proposal also adds a new provision that requires the bank not to structure its bonus or incentive plans in a manner that could create incentives for persons selling credit life insurance to provide inappropriate recommendations or sales of credit life insurance to customers of the bank. This provision is intended to protect consumers by requiring banks to address potential conflicts of interest that arise when loan officers also sell credit life insurance.

Other Changes

The proposal removes current § 2.5 which relates to director responsibilities since that issue is already considered in another section of the proposal. Current § 2.5 only addresses directors, and requires them to observe the requirements in § 2.4 and to be mindful of their duty under common law and 12 U.S.C. 73 to promote the interest of the bank over their personal interests. This section merely restates common law and statutory requirements. Moreover, the same basic fiduciary principles apply to bank officers and other employees involved in credit life insurance sales as well as to directors. The proposal states these principles in § 2.3(c), and applies them to all categories of bank officials and employees engaged in credit life insurance sales.

The proposal also removes current § 2.7 where the Comptroller reserves the authority to modify the applicability of any part of part 2 based on the particular circumstances of the bank. The OCC has rarely used this section. The OCC will continue to consider requests for interpretations of part 2 on a case-by-case basis.

The OCC welcomes comments on any aspect of the proposed regulation, particularly those issues specifically noted in this preamble.

DERIVATION TABLE

[This table directs readers to the provision(s) of the current regulation, if any, upon which the proposed revision is based.]

Revised provision	Original provision	Comments
§ 2.1	§§ 2.1, 2.2, 2.6.	Modified.
§ 2.2	§ 2.3	Modified.
§ 2.3	§§ 2.4(a), (b), 2.6.	Modified.
§ 2.4(a), (c)	§ 2.4(a), (c)	Modified.
§ 2.4(b)		Added.
	§ 2.5	Removed.
	§ 2.7	Removed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce the regulatory burden on national banks, regardless of size, by simplifying and clarifying existing regulatory requirements.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Because the OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, the rule has the effect of reducing burden and increasing the flexibility of national banks, consistent with safe and sound banking practices.

List of Subjects in 12 CFR Part 2

Credit, Life insurance, National banks.

Authority and Issuance

For the reasons set out in the preamble, part 2 of chapter I of title 12 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 2—SALES OF CREDIT LIFE INSURANCE

Sec.

Authority: 12 U.S.C. 24 (Seventh), 93a, and 1818(n).

§ 2.1 Authority, purpose, and scope.

(a) *Authority.* A national bank may furnish credit life insurance to loan customers pursuant to 12 U.S.C. 24 (Seventh).

(b) *Purpose.* The purpose of this part is to set forth the principles and

standards that apply to a national bank's sale of credit life insurance, and the limitations that apply to the receipt of income from those sales by certain individuals and entities associated with the bank.

(c) *Scope.* This part applies to sales of credit life insurance by any national bank employee, officer, director, or principal shareholder, and certain entities in which they have interests.

2.2 Definitions.

(a) *Credit life insurance* means credit life, health, and accident insurance.

(b) *Interest* includes:

(1) Ownership through a spouse or minor child;

(2) Ownership through a broker, nominee, or other agent; or

(3) Ownership through any corporation, partnership, association, joint venture, or proprietorship, that is controlled by a director, officer, employee, or principal shareholder of the bank.

(c) *Officer, director, employee, or principal shareholder* includes the spouse and minor children of an officer, director, employee, or principal shareholder.

(d) *Principal shareholder* means any shareholder who directly or indirectly owns or controls an interest of more than five percent of the bank's outstanding shares.

§ 2.3 Distribution of credit life insurance income.

(a) The means of distribution of credit life insurance income employed by a national bank must be consistent with the requirements and principles of this section.

(b) Except as provided in § 2.4, a director, officer, employee, or principal shareholder of a national bank, or an entity in which such person has a voting interest of five percent or more, may not retain commissions or other income from the sale of credit life insurance in connection with any loan made by that bank.

(c) It is an unsafe and unsound practice for any director, officer, employee, or principal shareholder of a national bank, (including any entity in which such a person has a voting interest of five percent or more), who is involved in the sale of credit life insurance to loan customers of a national bank, to take advantage of that business opportunity for personal profit. Income derived from credit life insurance sales to loan customers must be credited to the income accounts of the bank and not to the bank's employee, director, officer, or principal shareholder, or to an entity in which such a person has a voting interest of five percent or more.

§ 2.4 Bonus and incentive plans.

(a) A bank employee or officer may participate in a bonus or incentive plan based on the sale of credit life insurance if the following conditions are satisfied:

(1) Payments based on credit life insurance sales are made not more frequently than quarterly; and

(2) Payments to any individual in any one year do not exceed the greater of:

(i) Five percent of the recipient's annual salary; or

(ii) Five percent of the average salary of all loan officers participating in the plan.

(b) The bank may not structure its incentive or bonus program in a manner that creates incentives for an individual to make inappropriate recommendations or sales to customers of the bank.

(c) Nothing contained in this part prohibits a bank employee, officer, director, or principal shareholder who holds an insurance agent's license from agreeing to compensate the bank for the use of its premises, employees, or goodwill. However, the employee, officer, director, or principal shareholder shall turn over to the bank as compensation all income received from the sale of the credit life insurance to the bank's loan customers.

Dated: September 7, 1995.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 95–22699 Filed 9–12–95; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–212–AD]

Airworthiness Directives; Jetstream Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This proposal would require inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable. This proposal is prompted by a report of failure of an engine power cable, which could cause loss of function of the power control levers on the console. The actions specified by the proposed AD are intended to prevent loss of function of the levers on the console and subsequent loss of normal control of engine power.

DATES: Comments must be received by October 23, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket Number 94–NM–212–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises that it received a report indicating that an engine power cable failed while the airplane was on the ground. Investigation revealed that the engine power cable failure was caused by fatigue damage at the point where the cables pass around a small diameter pulley. Failure of the engine power cables could result in loss of function of the power control levers on the console. This condition, if not corrected, could result in loss of normal control of engine power.

Jetstream has issued Service Bulletin ATP–76–16, dated October 14, 1994, which describes procedures for repetitive detailed visual inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable. If one broken wire in any strand of an engine power cable is found, the service bulletin permits 60 further landings before replacement of the damaged cable. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual inspections and tests for damage of the engine power cables, and replacement of any damaged cable with a new cable. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Operators should note that, unlike the procedures recommended in the referenced Jetstream service bulletin, this proposed rule would not permit further flight after detection of any cable that is found with one wire broken in any strand. Instead, this proposed rule would require, prior to further flight, repair of the cable in accordance with the service bulletin. The FAA finds that an adequate level of safety for the affected fleet requires that damaged cables must be replaced prior to further flight. The FAA has determined that, in cases where certain known unsafe conditions exist, and where actions to detect and correct that unsafe condition can be readily accomplished, those actions must be required.

As a result of recent communications with the Air Transport Association (ATA) of America, the FAA has learned that, in general, some operators may misunderstand the legal effect of AD's on airplanes that are identified in the applicability provision of the AD, but that have been altered or repaired in the area addressed by the AD. The FAA points out that all airplanes identified in the applicability provision of an AD are legally subject to the AD. If an airplane has been altered or repaired in the affected area in such a way as to affect compliance with the AD, the owner or operator is required to obtain FAA approval for an alternative method of compliance with the AD, in accordance with the paragraph of each AD that provides for such approvals. A note has been included in this notice to clarify this long-standing requirement.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,200, or $120 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40101, 40113, 44701.

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Docket 94–NM–212–AD.

Applicability: Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This

approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of function of the power control levers on the console and subsequent loss of normal control of engine power due to failure of the engine power cables, accomplish the following:

(a) Perform a detailed visual inspection and tests for damage of the engine power cables, in accordance with Jetstream Service Bulletin ATP–76–16, dated October 14, 1994, at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter repeat this inspection and tests at intervals not to exceed 1,000 landings.

(1) Prior to the accumulation of 1,000 total landings on the engine power cable, or within 200 landings after the effective date of this AD, whichever occurs later.

(2) Within 75 days after the effective date of this AD.

(b) If any damaged engine power cable is found, prior to further flight, replace the damaged engine power cable with a new cable in accordance with the Jetstream Service Bulletin ATP–76–16, dated October 14, 1994. Thereafter, repeat the inspection and tests required by paragraph (a) of this AD at intervals not to exceed 1,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 7, 1995.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–22717 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ANM–18]

Proposed Establishment of Class E Airspace; Baker, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish the Baker, Montana, Class E airspace. If established, the airspace would accommodate a new instrument approach procedure at Baker Municipal Airport, Baker, Montana. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before October 13, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System management Branch, ANM–530, Federal Aviation Administration, Docket No. 95–ANM–18, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Frala, ANM–535/A, Federal Aviation Administration, Docket No. 95–ANM–18, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis support in the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ANM–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All commdents submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Baker, Montana, to accommodate a new instrument approach procedure at Baker Municipal Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of earth.

* * * * *

ANM MT E5 Baker, MT

Baker Municipal Airport, MT
(Lat 46°20′52″N, long. 104°15′34″W)

That airspace extending upward from 700 feet above the surface within an 8.9 mile radius of the Baker Municipal Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°29′00″N, long. 104°45′00″ W; to lat. 46°30′30″ N, long. 104°31′00″ W; to lat. 46°37′00″ N, long. 103°59′40″W; to lat. 46°37′55″ N, long. 103°53′45″ W; to lat. 46°25′45″ N, long. 103°37′30″ W: to lat. 46°17′30″ N, long. 103°48′15″ W; to lat. 45°40′00″ N, long. 103°00′50″ W; to lat. 45°35′30″ N, long. 103°01′45″ W; to lat. 45°49′30″N, long. 103°37′30″ W; to lat. 45°35′50″ N, long. 103°34′30′ W; to lat. 46°10′50″ N, long. 103°56′00″ W; to lat. 46°04′20″ N, long. 104°20′45″ W; to the point of beginning; excluding that portion within the Bowman Municipal Airport, MT, 1,200-foot Class E airspace area.

* * * * *

Issued in Seattle, Washington, on August 30, 1995.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 95–22737 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Extension of Port Limits of Puget Sound, WA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the consolidated port of entry of Puget Sound, Washington. The current boundaries are being extended to include the portion of King County, Washington, which now lies between the boundaries of the Port of Seattle and the Port of Tacoma. The boundaries are being changed because various commercial operations requiring the services of Customs personnel have been established in areas beyond the current limits of the consolidated port.

This proposed change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be submitted to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, DC, on regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Patricia M. Duffy, Office of Field Operations, 202–927–0509.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographical limits of the Port of Seattle, Washington, which is within the consolidated Customs Port of Puget Sound in the Pacific Region.

Current Port Limits of Seattle

The port limits of the consolidated Customs port of entry of Puget Sound, Washington, were established in Treasury Decision (T.D.) 75–130 of May 21, 1975 (effective July 1, 1975). They were most recently extended by T.D. 83–146 of June 23, 1983 (effective August 4, 1983).

The port limits of the consolidated Port of Puget Sound consist of a description of the Port of Seattle as well as a listing of Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, and a description of territory in Tacoma. The current boundaries of the Port of Seattle described in the port description of Puget Sound are as follows:

Section 35, Township 27 North, Range 3 East, West Meridian, County of Snohomish and the geographical area within the boundaries beginning at the intersection of NW. 205th Street and the waters of Puget Sound, proceeding in an easterly direction along the King County line to its intersection with 100th Avenue, NE., thence southerly along 100th Avenue, NE. and its continuation to the intersection of 100th Avenue, SE. and 240th Street, SE., thence westerly along 240th Street SE., and south, to its intersection with the waters of Puget Sound and then northerly along the shores of Puget Sound to its intersection with NW. 205th Street, the point of beginning, County of King, all within the State of Washington.

Proposed Expansion of Port

Customs is now proposing to expand the Port of Seattle by extending the southern boundary of the Port of Seattle to the King-Pierce County line. The southern boundary, if so extended, would convene with the existing northern boundary of the port of entry at Tacoma, Washington. The new boundary for the Port of Seattle will then be section 85, Township 27 North, Range 3 East, West Meridian, County of Snohomish.

This proposed expansion of the Seattle port limits would provide a continuous area of service from Tacoma's Commencement Bay to Seattle's Elliot Bay, and would align the port in a manner already identified by the trade as beneficial due to the central location between Seattle and Tacoma.

Expansion of the port limits would improve service to the public, clarify resource allocations for facilities within the expanded area, and allow beneficial commercial development within the consolidated port of entry of Puget Sound.

The District of Seattle will use existing staffing to service the expanded

area of the consolidated Port of Puget Sound. The Regional Commissioner supports the expansion request with the stipulation that no additional staff will be required to operate the expanded facilities and marinas.

Proposed Seattle Port Limits

The geographical area within the proposed new boundaries will be as follows:

Beginning at the intersection of NW. 205th Street and the waters of Puget Sound, proceeding in an easterly direction along the King County line to its intersection with 100th Avenue, NE., thence southerly along 100th Avenue, NE. and its continuation to the intersection of 100th Avenue, SE. and 240th Street, SE., thence westerly along 240th Street, SE. to its intersection with North Central Avenue., thence southerly along North Central Avenue, its continuation as South Central Avenue and 83rd Avenue South and its connection to Auburn Way North, thence southerly along Auburn Way North and its continuation as Auburn Way South to its intersection with State Highway 18, thence westerly along Highway 18 to its intersection with A Street, SE., then southerly along A Street, SE. to its intersection with the King County Line, then westerly along the King County Line to its intersection with the waters of Puget Sound and then northerly along the shores of Puget Sound to its intersection with NW. 205th Street, the point of beginning, all within the County of King, State of Washington.

If the proposed extension of the consolidated port of entry of Puget Sound is adopted, the list of Customs ports of entries in 19 CFR 101.3(b) will be amended accordingly.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), Section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m., at the Regulations Branch, Office of Regulations and Rulings, 1099 14th Street NW., Suite 4000, Washington, DC.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

The Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency reorganization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other office participated in its development.

George J. Weise,

Commissioner of Customs.

Approved: August 24, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–22641 Filed 9–12–95; 8:45 am]

BILLING CODE 4820–02–P

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19 CFR Part 101

Name Change for Consolidated Port of Philadelphia

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to change the name of the Consolidated Port of Philadelphia to the Consolidated Port of the Delaware River and Bay, and to identify the participating ports within the consolidated port.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Comments (preferable in triplicate) must be submitted to the U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: A. Donald Gilman, Office of Congressional and Public Affairs, (202) 927–1169.

SUPPLEMENTARY INFORMATION:

Background

Section 101.3, Customs Regulations (19 CFR 101.3), lists as one of Customs ports of entry Philadelphia-Chester, Pa. and Wilmington, Del. This port includes the named cities and includes Camden, Gloucester City and Salem, New Jersey and territory described in T.D. 84–195. The port of entry is popularly known as the Consolidated Port of Philadelphia.

After a meeting with trade community representatives from both Wilmington, Delaware and Philadelphia, Pennsylvania, Customs has determined that the name of the consolidated port should be changed to the Consolidated Port of the Delaware River and Bay, and that participating ports within the consolidated port would be identified. The Wilmington, Delaware trade community strongly favors such a name change, and the Philadelphia trade community has not expressed any objection to that suggestion.

Proposal

Accordingly, Customs is proposing in this document to change the name of the port of Philadelphia-Chester, PA. and Wilmington, Del., popularly known as the Consolidated Port of Philadelphia to the Consolidated Port of the Delaware River and Bay. If the proposed name change of the port is adopted, the list of ports in 19 CFR 101.3(b) will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street NW., Suite 4000, Washington, DC.

Regulatory Flexibility Act

Although this document is being issued for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, the document is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

Agency organization matters such as this are exempt from Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

Approved: August 23, 1995.

Michael H. Lane,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–22642 Filed 9–12–95; 8:45 am]

BILLING CODE 4820–02–P

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, 13, and 19

[Notice No. 815]

RIN 1512–AB34

Procedures for the Issuance, Denial, and Revocation of Certificates of Label Approval, Certificates of Exemption From Label Approval, and Distinctive Liquor Bottle Approvals (93F–029P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to issue regulations specifically setting forth the procedures for the issuance, denial, and revocation of certificates of label approval (COLAs), certificates of exemption from label approval, and distinctive liquor bottle approvals. The proposed denial and revocation regulations are new, whereas the proposed issuance regulations are more specific than the current regulations. The proposed regulations would also codify the procedures for administratively appealing the denial or revocation of certificates of label approval, exemptions from label approval, or distinctive liquor bottle approvals.

DATES: Written comments to this proposed rule must be received by December 12, 1995.

ADDRESSES: Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 815).

Copies of the proposed regulation and any written comments received will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert White, Coordinator, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration (FAA) Act, 27 U.S.C. § 205(e), provides ATF, as the delegate of the Secretary of the Treasury, with authority to promulgate regulations with respect to the bottling, packaging, and labeling of distilled spirits, wine, and malt beverages in order to prohibit deception of the consumer, and provide the consumer with adequate information as to the identity and quality of the product.

In order to carry out such requirements, domestic bottlers and producers are prohibited from bottling distilled spirits, wines, or malt beverages, and importers are prohibited from removing bottled distilled spirits, wines, or malt beverages from Customs custody, unless they have in their possession a certificate of label approval covering such products, ''issued by the Secretary in such manner and form as he shall by regulations prescribe.'' 27 U.S.C. § 205(e). The law provides an exemption from these requirements for products which are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce.

The regulations implementing these statutory provisions provide that no person shall bottle or pack wine, distilled spirits, or malt beverages unless application is made to the Director and an approved certificate of label approval, ATF Form 5100.31, is issued. 27 CFR §§ 4.50(a), 5.55(a), and 7.41. The regulations also provide that no bottled wines, distilled spirits, or malt beverages shall be released from Customs custody for consumption unless an approved certificate of label approval, ATF Form 5100.31, is deposited with the appropriate Customs officer at the port of entry. 27 CFR §§ 4.40(a), 5.51(a), and 7.31(a).

A bottler of wine or distilled spirits who can show to the satisfaction of the Director that the product is not to be sold, offered for sale, or shipped or delivered for shipment or otherwise introduced in interstate or foreign commerce, must make application for exemption from the labeling requirements of the FAA Act on ATF Form 5100.31 in accordance with the instructions on the form. If the application is approved, a certificate of exemption from label approval will be issued on the same form. 27 CFR §§ 4.50(b) and 5.55(b). Certificates of exemption from label approval are not issued for malt beverages.

Finally, the ATF Form 5100.31 is also used to obtain approval for distinctive liquor bottles, pursuant to the regulations appearing at 27 CFR § 19.633(a). ATF's authority to regulate liquor bottles is derived from section 5301 of the Internal Revenue Code of 1986, 26 U.S.C. § 5301. However, the approval of a distinctive liquor bottle also includes the approval of the label on that bottle, pursuant to the FAA Act.

Revocation of COLAs

ATF reviews over 60,000 applications for certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals every year. There is no doubt that errors will occasionally occur in the approval process. Thus, there is clearly a necessity for some type of revocation procedure.

Since the enactment of the FAA Act in 1935, ATF and its predecessor agencies have taken the position that the statutory authority to issue certificates of label approval also included an implied statutory authority to cancel or revoke such certificates in the event that such certificates were approved in error. There have never been formal procedures in the regulations for denial or revocation of certificates of label approval. However, ATF has utilized informal procedures for denials and revocations, where applicants or certificate holders who wished to contest a denial or revocation were given an opportunity to do so in writing, or through informal meetings with Bureau officials.

The certificate of label approval was never intended to convey any type of proprietary interest to the certificate holder. On the contrary, Paragraph III(1)(c) of Form 5100.31 provides that ''[t]his certificate is issued for Bureau of Alcohol, Tobacco and Firearms use only and does not constitute trademark protection, or relieve any person from liability for violations of the FAA Act and related regulations and rulings.'' The certificate of label approval is a statutorily mandated tool used to help ATF in its enforcement of the labeling requirements of the FAA Act.

Recently, however, ATF's procedures for revocation of COLAs were subject to challenge in the Federal District Court for the Northern District of California. In *Cabo Distributing Co.* v. *Brady*, 821 F. Supp. 601 (N.D. Cal. 1992), the court set aside ATF's revocation of labels for ''Black Death'' vodka on several grounds. The court held that there was no express statutory or regulatory authority for the Bureau to cancel certificates of label approval, and that the Bureau had implied authority to reverse its actions only in limited circumstances. The court thus concluded that ''[w]ithout statutory authority or regulatory authority, the BATF [sic] cannot cancel a certificate of label approval.'' 821 F. Supp. at 612. The court also held that the Bureau's informal procedures for revoking the ''Black Death'' certificates of label approval had not afforded the certificate holders their constitutional right to procedural due process. 821 F. Supp. at 612.

ATF does not agree with the court's decision on either of these two holdings. ATF believes that a right to cancel certificates of label approval is implied from the statute's delegation to the Secretary of the authority to issue certificates of label approval ''in such manner and form as he shall by regulations prescribe* * *'' The statute thus explicitly authorizes ATF, as a delegate of the Secretary, to issue regulations governing the procedure for the issuance of certificates of label approval. There is also implicit statutory authority to issue regulations governing the procedures for denying and revoking certificates of label approval.

ATF believes that the procedures which it has been using for revoking certificates of label approval, although not codified in the regulations, have provided certificate holders with due process of law. However, in order to clarify its authority and procedures for revocation of label approvals, ATF is proposing to adopt new regulations in a new Part 13 which will set forth procedures for revoking such approvals and for appealing such revocations. The procedures will also provide applicants with the opportunity to administratively appeal the denial of applications for label approval. Finally, the procedures will also cover certificates of exemption from label approval and distinctive liquor bottle approvals, since these are issued on the same form as certificates of label approval.

Proposed Procedures

ATF is proposing to issue regulations specifically setting forth the procedures for the issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals. The proposed denial and revocation regulations are new, whereas the proposed issuance regulations are more specific than the current regulations. The proposed regulations would also codify the procedures for administratively appealing the denial or revocation of certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals. ATF believes that the proposed regulations would afford applicants and certificate holders with more than adequate due process of law. ATF also believes that the codification of these procedures in regulations will eliminate any questions as to its authority to revoke certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals.

Under current regulations, the authority to approve certificates of label approval, exemptions from label approval, and distinctive liquor bottle applications rests with the Director. When an application for label approval, exemption from label approval, or distinctive liquor bottle approval is approved, the signature of the Director is affixed to the form, with the date, and any qualifications are marked in the appropriate space on the form. The approved ATF Form 5100.31 is then sent to the applicant. If an application is denied for any reason, the applicant is sent an ATF Form 5190.1, ''ATF F 5100.31 Correction Sheet,'' with the reasons for the denial briefly noted on the form. The proposed regulations will codify this practice.

The proposed regulations afford the applicant an opportunity to file a written appeal of the denial of an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, with the Chief, Labeling Section, Product Compliance Branch, within 45 days after the date of the notice of denial. Such an appeal should explain the basis for the applicant's belief that the denial was erroneous, and that the subject label or bottle is in compliance with all applicable laws and regulations. After considering all relevant facts and issues presented in writing by the applicant, the Chief, Labeling Section, shall issue a final decision on the denial of the application.

With respect to revocations of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, the proposed regulations provide that the Chief, Product Compliance Branch, shall provide the certificate holder with a notice of proposed revocation prior to taking any action with respect to the label or distinctive liquor bottle. The certificate holder shall have 45 days from the date of the notice in which to present written arguments as to why the revocation should not occur. After considering any arguments or facts presented during this 45-day period, the Chief, Product Compliance Branch, shall issue a decision. If the decision is to revoke the label or distinctive liquor bottle approval, the certificate holder shall then have 45 days from the date of the decision of the Chief, Product Compliance Branch, to file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The written appeal should include all pertinent arguments and evidence which the certificate holder wishes to present. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

The proposed regulations authorize applicants or certificate holders to request informal conferences at each stage of the administrative appeal process. The decision whether to grant such requests lies entirely within the discretion of the official considering the administrative appeal. It should be noted that the issue of informal conferences arose during the litigation over the ''Black Death'' labels. To avoid any possible misunderstandings which might arise out of inconsistent recollections by meeting participants, the proposed regulations will clarify that informal conferences are not on the record. To the extent that an applicant or certificate holder wishes to rely on arguments or evidence presented at an informal conference, he or she must present such arguments or evidence in writing to the decision maker within 10 days after the date of the conference.

Exception to Notice of Proposed Revocation Requirement

The proposed regulations provide that where there is a change in labeling requirements by operation of law or regulation, there is no requirement to issue a notice of proposed revocation prior to notifying a certificate holder of the revocation of a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval. In these cases, the burden of ensuring that affected labels are in compliance with the new requirements imposed by statute or regulation should be on the certificate holder, not ATF. If ATF determines that a label or bottle which is not in

compliance with the new statutory or regulatory requirements is still being used, the Chief, Product Compliance Branch, will issue a letter notifying the certificate holder that the certificate has been revoked by operation of law or regulation. If the certificate holder wishes to challenge the application of the law or regulation to the particular label or bottle, he or she may appeal the decision, in writing, to the Chief, Alcohol and Tobacco Programs Division.

If the proposals in this notice are adopted, regulations in Parts 4, 5, 7, and 19 will be amended to cross reference the procedures enumerated in Part 13.

Public Participation

ATF requests all interested parties to submit written comments concerning the issuance, denial, revocation, and appeal procedures proposed in this notice of proposed rulemaking. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The names of commenters are not exempt from disclosure.

Written comments will be available for public inspection during normal business hours at the following address: ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation will give ATF specific regulatory authority to issue, deny or revoke certificates of label approval, exemptions from label approval, and distinctive liquor bottle approvals. The regulation will not increase recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Robert L. White, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Appeals, Applications, Certificates of label approval, Certificates of exemption from label approval, Denials, Distinctive liquor bottle approvals, Informal conferences, Labeling, Revocations.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority and Issuance

Chapter I of Title 27, Code of Federal Regulations, is proposed to be amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph 1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Section 4.40 is amended to add paragraph (d) to read as follows:

§ 4.40 Label approval and release.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see Part 13 of this chapter.

Par. 3. Section 4.50 is amended to add paragraph (c) to read as follows:

§ 4.50 Certificates of label approval.

* * * * *

(c) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, and certificates of exemption from label approval, as well as appeal procedures, see Part 13 of this chapter.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 4. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

Par. 5. Section 5.46 is amended to revise paragraph (d) to read as follows:

§ 5.46 Standard liquor bottles.

* * * * *

(d) *Exceptions*—(1) *Distinctive Liquor Bottles.* The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles which are specifically exempted by the Director, pursuant to an application filed by the bottler or importer.

(2) *Cross reference.* For procedures regarding the issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see Part 13 of this chapter.

Par. 6. Section 5.51 is amended to add paragraph (e) to read as follows:

§ 5.51 Label approval and release.

* * * * *

(e) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 7. Section 5.55 is amended to add paragraph (d) to read as follows:

§ 5.55 Certificates of label approval.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see Part 13 of this chapter.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 8. The authority citation for Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 9. Section 7.31 is amended to add paragraph (d) to read as follows:

§ 7.31 Label approval and release.

* * * * *

(d) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 10. Section 7.41 is revised to read as follows:

§ 7.41 Certificates of label approval.

(a) *Requirement.* No person shall bottle or pack malt beverages, or remove malt beverages from the plant where bottled or packed unless application is made to the Director, and an approved certificate of label approval, ATF Form 5100.31, is issued by the Director.

(b) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval, as well as appeal procedures, see part 13 of this chapter.

Par. 11. Part 13 is added to read as follows:

PART 13—LABELING PROCEEDINGS

Subpart A—Scope and Construction of Regulations

Sec.
13.1 Scope of part.

Subpart B—Definitions

13.5 Meaning of terms.

Subpart C—Applications

13.11 Application for certificate.
13.12 Notice of denial.
13.13 Appeal of denials.
13.14 Final decision after appeal of denial.

Subpart D—Revocations

13.20 Revocation of certificates.
13.21 Notice of proposed revocation.
13.22 Decision after notice of proposed revocation.
13.23 Appeal of revocation.
13.24 Final decision after appeal.

Subpart E—Revocation by Operation of Law or Regulation

13.35 Revocation by operation of law or regulation.
13.36 Notice of revocation.
13.37 Appeal of notice of revocation.
13.38 Decision after appeal.

Subpart F—Miscellaneous

13.40 Informal conferences.
13.45 Effective dates of revocations.
13.50 Effect of revocations.
13.55 Service on applicant or certificate holder.
13.60 Representation before the Bureau.
13.65 Computation of time.
13.70 Extensions.

Authority: 270 U.S.C. 205(e) and 26 U.S.C. 5301.

Subpart A—Scope and Construction of Regulations

§ 13.1 Scope of part.

The regulations in this part govern the procedure and practice in connection with the issuance, denial, and revocation of certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals under 27 U.S.C. 205(e) and 26 U.S.C. 5301. The regulations in this part also provide for appeal procedures when applications for label approval, exemptions from label approval, or distinctive liquor bottle approvals are denied, or when these applications are approved and then subsequently revoked.

Subpart B—Definitions

§ 13.5 Meaning of terms.

Where used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this subpart. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms ''include'' and ''including'' do not exclude things not enumerated which are in the same general class.

Act. The Federal Alcohol Administration Act.

Applicant. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an unapproved ATF F 5100.31, application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

ATF. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC 20226.

Brewer. Any person who brews beer (except a person who produces only beer exempt from tax under 26 U.S.C. 5053(e)) and any person who produces beer for sale.

Certificate holder. The permittee or brewer whose name, address, and basic permit number, or plant registry number, appears on an approved ATF F 5100.31, certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval.

Certificate of exemption from label approval. A certificate issued on ATF F 5100.31 which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval. A certificate issued on ATF F 5100.31 which authorizes the bottling or packing of wine, distilled spirits, or malt beverages, or the removal of bottled wine, distilled spirits, or malt beverages from Customs custody for introduction into commerce, as long as the product bears labels identical to the labels affixed to the face of the certificate, or labels with changes authorized by the certificate.

Chief, Alcohol and Tobacco Programs Division. The ATF official responsible under this part for deciding appeals of revocations of:

(1) Certificates of label approval;

(2) Certificates of exemption from label approval; and

(3) Distinctive liquor bottle approvals.

Chief, Labeling Section, Product Compliance Branch.

The ATF official responsible under this part for deciding appeals of denials of applications for:

(1) Certificates of label approval;

(2) Certificates of exemption from label approval; and

(3) Distinctive liquor bottle approvals.

Chief, Product Compliance Branch. The ATF official responsible under this part for issuing revocations of

(1) Certificates of label approval;

(2) Certificates of exemption from label approval; and

(3) Distinctive liquor bottle approvals.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof for nonindustrial use. The term ''distilled spirits'' shall not include mixtures containing wine,

bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

Distinctive liquor bottle. A liquor bottle of distinctive shape or design.

Distinctive liquor bottle approval. Approval issued on ATF F 5100.31 which authorizes the bottling of distilled spirits, or the removal of bottled distilled spirits from Customs custody for introduction into commerce, as long as the bottle is identical to the photograph affixed to the face of the form.

Interstate or foreign commerce. Commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to protect the revenue adequately.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act.

Person. Any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof.

Product Compliance Branch Specialist. An ATF official—

(1) Responsible under this part for reviewing initial applications for:

(i) Certificates of label approval;

(ii) Certificates of Exemption from label approval; and

(iii) Distinctive liquor bottle approvals; and

(2) With authority to affix the Director's signature to approved certificates and to issue an ''ATF F 5100.31 Correction Sheet'' along with any denial of an application.

United States. The several States and Territories and the District of Columbia; the term ''State'' includes a Territory and the District of Columbia; and the term ''Territory'' means the Commonwealth of Puerto Rico.

Use of other terms. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by the Act.

Wine. (1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 3036, 3044, 3045) and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance only if containing not less than 7 percent, and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

Subpart C—Applications

§ 13.11 Application for certificate.

An applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, shall send signed duplicate copies of ATF Form 5100.31, ''Application for and Certification/Exemption of Label/Bottle Approval'' to the Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226. If the application evidences compliance with all applicable laws and regulations, a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval shall be issued, and the Director's signature shall be affixed to the form. If the approval is qualified in any manner, such qualifications shall be set forth in the appropriate space on the form.

§ 13.12 Notice of denial.

Whenever an application for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval is denied, a Product Compliance Branch Specialist shall issue to the applicant a notice of denial on ATF Form 5190.1, entitled ''ATF F 5100.31 Correction Sheet,'' briefly setting forth the reasons why the label or bottle is not in compliance with the applicable laws or regulations. The applicant may then submit a new application for approval after making the necessary corrections.

§ 13.13 Appeal of denials.

If an applicant for a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval wishes to appeal the denial of an application, he or she may file a written appeal with the Chief, Labeling Section, Product Compliance Branch, within 45 days after the date of the notice of denial. Such an appeal should explain the basis for the applicant's belief that the subject label or bottle is in compliance with the applicable laws and regulations. If no appeal is filed within 45 days after the date of the notice of denial, such notice of denial shall be the final decision of the Bureau.

§ 13.14 Final decision after appeal of denial.

After considering any written arguments or evidence presented by the applicant or his or her representative, the Chief, Labeling Section, Product Compliance Branch, shall issue a written decision to the applicant. If the decision is that the denial should stand, a copy of the application, marked ''appeal denied,'' shall be returned to the applicant, along with a brief explanation of the basis for the denial and the specific laws or regulations relied upon in denying the application. If the decision is that the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle application should be approved, ATF Form 5100.31 shall be issued in accordance with usual procedures. The decision of the Chief, Labeling Section, Product Compliance Branch, shall be the final decision of the Bureau.

Subpart D—Revocations

§ 13.20 Revocation of certificates.

Certificates of label approval, certificates of exemption from label approval, and distinctive liquor bottle approvals, previously approved on ATF Form 5100.31, may be revoked by the Chief, Product Compliance Branch, upon a finding that the label or bottle at issue is not in compliance with the applicable laws or regulations.

§ 13.21 Notice of proposed revocation.

Except as provided in § 13.35, when the Chief, Product Compliance Branch, determines that a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been issued for a label or bottle which is not in compliance with the laws or regulations, he or she shall issue to the certificate holder a notice of proposed

revocation which shall set forth the basis for the proposed revocation and shall provide the certificate holder with 45 days from the date of the notice in which to present written arguments or evidence as to why the revocation should not occur.

§ 13.22 Decision after notice of proposed revocation.

After considering any written arguments or evidence presented by the certificate holder or his or her representative, the Chief, Product Compliance Branch, shall issue a decision. If the decision is to revoke the certificate, a letter shall be issued explaining the basis for the revocation of the certificate, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter to that effect shall be issued.

§ 13.23 Appeal of revocation.

A certificate holder who wishes to appeal the decision of the Chief, Product Compliance Branch, to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, may file a written appeal with the Chief, Alcohol and Tobacco Programs Division, setting forth the grounds on which he or she believes that the decision of the Chief, Product Compliance Branch, was erroneous. Such appeal must be filed with the Chief, Alcohol and Tobacco Programs Division, within 45 days after the date of the decision of the Chief, Product Compliance Branch.

§ 13.24 Final decision after appeal.

After considering any written arguments or evidence presented by the certificate holder or his or her representative, the Chief, Alcohol and Tobacco Programs Division, shall issue a written decision to the certificate holder. If the decision is to revoke the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter shall be issued explaining the basis for the revocation, and the specific laws or regulations relied upon in determining that the label or bottle was not in conformance with law or regulations. If the decision is to withdraw the proposed revocation, a letter to that effect shall be sent to the certificate holder. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

Subpart E—Revocation by Operation of Law or Regulation

§ 13.35 Revocation by operation of law or regulation.

ATF will not individually notify all holders of certificates of label approval, certificates of exemption from label approval, or distinctive liquor bottle approvals, that such approvals have been revoked in situations where such revocation occurs by operation of law or regulation.

Where changes in labeling or other requirements are made as a result of amendments or revisions to the law or regulations, it is the responsibility of the certificate holder to voluntarily surrender all certificates which are no longer in compliance, and to submit applications for new certificates in compliance with the new requirements; *Provided*, that in certain circumstances, ATF may announce that the submission of new applications for label approval is not necessary in order to implement a new requirement in the law or regulations. In such circumstances, it is the responsibility of the certificate holder to ensure that labels are in compliance with the requirements of the new regulations or law, notwithstanding the fact that new applications for label approval were not required.

§ 13.36 Notice of revocation.

If ATF determines that a certificate holder is still using a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval which is no longer in compliance due to amendments or revisions in the law or regulations, the Chief, Product Compliance Branch, will notify the certificate holder in writing that the subject certificate has been revoked by operation of law or regulations, with a brief description of the grounds for such revocation.

§ 13.37 Appeal of notice of revocation.

Within 45 days after the date of a notice of revocation by operation of law or regulations, the certificate holder may file a written appeal with the Chief, Alcohol and Tobacco Programs Division. The appeal should set forth the reasons why the certificate holder believes that the regulation or law at issue does not require the revocation of the certificate.

§ 13.38 Decision after appeal.

After considering all written arguments and evidence submitted by the certificate holder, the Chief, Alcohol and Tobacco Programs Division, shall issue a final decision regarding the revocation by operation of law or regulation of the certificate. If the decision is that the law or regulation at issue requires the revocation of the certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, a letter shall be issued explaining the basis for the revocation, and citing the specific laws or regulations which required the revocation of the certificate. If the decision is that the law or regulation at issue does not require the revocation of such certificate, a letter to that effect shall be sent to the certificate holder. The decision of the Chief, Alcohol and Tobacco Programs Division, shall be the final decision of the Bureau.

Subpart F—Miscellaneous

§ 13.40 Informal conferences.

(a) *General.* As part of a timely filed written appeal of a notice of denial, a notice of proposed revocation, or a decision of the Chief, Product Compliance Branch, to revoke a certificate, an applicant or certificate holder may file a written request for an informal conference with the ATF official deciding the appeal. However, the decision whether to hold an informal conference is at the sole discretion of the deciding official.

(b) *Informal conference procedures.* If the deciding official determines that the holding of an informal conference would be beneficial, he or she shall inform the applicant or certificate holder, and a date shall be agreed upon. The informal conference is for purposes of discussion only, and no transcript shall be made. If the applicant or certificate holder wishes to rely upon arguments, facts, or evidence presented at the informal conference, he or she has 10 days after the date of the conference to incorporate such arguments, facts, or evidence in a written submission to the deciding official.

§ 13.45 Effective dates of revocations.

With the exception of revocations occurring pursuant to § 13.35, ATF shall allow at least 45 days between the issuance of a decision to revoke a certificate, and the actual revocation of the certificate. The deciding official may, at his or her discretion, allow the certificate holder a longer period of time in which to use up the existing stock of labels or distinctive liquor bottles. The decision to allow such a ''use-up'' period, and the length of the ''use-up'' period allowed, are matters committed entirely to the discretion of the deciding official, based on the circumstances of the case.

§ 13.50 Effect of revocations.

(a) *General.* On the effective date of a final decision which has been issued by the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, to revoke a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval, the certificate holder shall be asked to surrender the original of such certificate to ATF for manual cancellation. Regardless of whether the original certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval has been manually cancelled or not, the certificate shall be null and void after the effective date of the certificate's revocation. It shall be a violation of this section for any certificate holder to present a certificate of label approval, certificate of exemption from label approval, or distinctive liquor bottle approval to an official of the United States Government as a valid certificate, after the effective date of the revocation of the certificate, if the certificate holder has been previously notified that such certificate has been revoked by ATF.

(b) *Use of certificate during period of appeal.* If a certificate holder files a timely appeal after receipt of a notice of revocation from the Chief, Product Compliance Branch pursuant to section 13.22, he or she may continue to use the certificate at issue until the effective date of a final decision issued by the Chief, Alcohol and Tobacco Programs Division. However, the effective date of a notice of revocation by operation of law or regulations, issued pursuant to § 13.36, is not stayed during the pendency of an appeal.

§ 13.55 Service on applicant or certificate holder.

Notices of denial, notices of proposed revocation, and notices of revocation shall be served on an applicant or a certificate holder by first class mail, or by personal delivery. When service is by mail, a signed duplicate original copy of the document shall be mailed to the applicant or certificate holder at the address stated in the application for a certificate of label approval, or at the last known address. If authorized by the applicant or certificate holder, the signed duplicate original copy of the document may be mailed to a designated representative. Where service is by personal delivery, a signed duplicate original copy of the document shall be delivered to the certificate holder or to a designated representative, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent thereof, or to its attorney of record.

§ 13.60 Representation before the Bureau.

An applicant or certificate holder may be represented by an attorney, certified public accountant, or other person recognized to practice before the Bureau of Alcohol, Tobacco and Firearms as provided in 31 CFR Part 8 (Practice Before the Bureau of Alcohol, Tobacco and Firearms), if he or she has otherwise complied with the applicable requirements of 26 CFR 601.521 through 601.527 (conference and practice requirements for alcohol, tobacco, and firearms activities).

§ 13.65 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act, event or default after which the designated period of time is to run, is not to be included. The last day of the period to be computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday, or legal holiday. Papers or documents which are required or permitted to be filed under this part must be received for filing at the appropriate office within the time limits, if any, for such filing.

§ 13.70 Extensions.

For good cause shown, the Chief, Labeling Section, Product Compliance Branch, the Chief, Product Compliance Branch, or the Chief, Alcohol and Tobacco Programs Division, may grant extensions as to any time limits prescribed by the regulations in this part.

PART 19—DISTILLED SPIRITS PLANTS

Par. 12. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 13. Section 19.633 is amended to add paragraph (c) to read as follows:

§ 19.633 Distinctive liquor bottles.

* * * * *

(c) *Cross reference.* For procedures regarding issuance, denial and revocation of distinctive liquor bottle approvals, as well as appeal procedures, see part 13 of this chapter.

Par. 14. Section 19.641 is revised to read as follows:

§ 19.641 Certificate of label approval or exemption.

(a) *Requirement.* Proprietors are required by 27 CFR part 5 to obtain approval of labels, or exemption from label approval, for any label to be used on bottles of spirits for domestic use and shall exhibit evidence of label approval, or of exemption from label approval, on request of an ATF officer.

(b) *Cross reference.* For procedures regarding the issuance, denial and revocation of certificates of label approval and certificates of exemption from label approval, as well as appeal procedures, see part 13 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

Signed: July 26, 1995.

Daniel R. Black,

Acting Director.

Approved: August 17, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–22577 Filed 9–12–95; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Steel Erection Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of cancellation of committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA), the Occupational Safety and Health Administration (OSHA) is announcing the cancellation of a Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) meeting scheduled for September 19–21, 1995 in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: This document announces the cancellation of a meeting of the Steel Erection Negotiated Rulemaking Advisory Committee (SENRAC) that was

scheduled for September 19–21, 1995 by a notice published on August 30, 1995 (60 FR 45111). The meeting will be rescheduled at a later date.

For an electronic copy of this **Federal Register** notice, contact the Labor News Bulletin Board at (202) 219–4784 (callers must pay any toll-call charges. 300, 1200, 2400, 9600 or 14,400 BAUD; Parity: None; Data Bits = 8; Stop Bit = 1. Voice phone (202) 219–8831); or OSHA's Webpage on Internet at http://www.osha.gov/ and http://www.osha-slc.gov/. For news releases, fact sheets, and other documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 et seq.; and Section 7(b) of the Occupational Safety and Health Act of 1970, 84 Stat. 1597, Title 29 U.S.C. 656.

Signed at Washington, D.C., this 7th day of Sept., 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–22690 Filed 9–12–95; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR PART 13

RIN 1024–AC31

Denali National Park and Preserve, Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The National Park Service (NPS) is proposing regulations to require mountain climbers to register a minimum of 60 days before any climb on Mount McKinley and Mount Foraker in Denali National Park, Alaska. Mountaineering in the park has increased dramatically over the last ten years. The number of climbers on Mount McKinley has risen from 695 in 1984 to 1277 in 1994 and 1,220 in 1995. Climbing-related injuries and deaths have correspondingly increased. By requiring advance registration, the Denali park staff will be able to provide information to prospective mountaineers in advance of their climb. This may include information on the specific dangers they may face, how to prepare and equip, other safety related issues, and requirements concerning resource protection issues such as litter removal and human waste disposal. Currently, climbers are required to register, but may do so as late as the day they depart for the mountain.

DATES: Written comments will be accepted through November 13, 1995.

ADDRESSES: All comments should be addressed to: Superintendent, Denali National Park and Preserve, PO Box 9, Denali National Park, AK 99755.

FOR FURTHER INFORMATION CONTACT: Steve Martin, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali National Park, AK 99755.

SUPPLEMENTARY INFORMATION:

Background

Denali National Park was first established as Mt. McKinley National Park on February 26, 1917. A separate Denali National Monument was proclaimed on December 1, 1978. These two park areas were combined, reconfigured and established as Denali National Park and Preserve on December 2, 1980, encompassing approximately 6.5 million acres. Prior to achieving its current configuration, the land the park now encompasses was recognized for its unique ecological value and designated an International Biosphere Reserve in 1976. That designation has since been expanded to encompass the entire 6.5 million acre park and preserve. The park contains North America's highest mountain, 20,320 foot Mount McKinley. Mount Foraker, at 17,400 feet, and numerous large glaciers of the Alaska Range are also a part of this park's subarctic ecosystem. Wildlife includes caribou, Dall sheep, moose, grizzly bears and wolves.

The first ascent of Mount McKinley occurred in 1913. Climbing continued to be a popular activity, although on a small scale, after the park was established. However, during the last ten years, mountaineering in the park has increased dramatically. The number of Mount McKinley climbers has risen from 695 in 1984 to 1277 in 1994 and 1,220 in 1995. With the numbers of climbers increasing, the number of accidents, rescues and resource related problems have also increased. Since 1932, a total of 85 mountaineers have perished on the slopes of Mount McKinley; 28 percent of these deaths (24) have occurred since 1990. Recent years have also seen an increase in climbing related deaths on Mount Foraker and the other Alaska Range peaks located in the park. In 1990, eight mountaineers were rescued on Mount McKinley. In sharp contrast, the number of mountaineers rescued increased to 28 in 1992, 27 in 1994 and 21 in 1995. Studies by the NPS showed that the major reason climbers got into trouble on the mountain and required rescue was their unfamiliarity with the hazards unique to Mount McKinley. Specifically, extreme weather conditions, weather changeability and the other hazards associated with climbing in such northerly latitudes caught the climbers unprepared. The NPS determined that climbers need better education and information prior to their climbs and that an appropriate time frame was necessary to convey this information to the climbing community. Climbers from 38 countries registered to climb Mount McKinley in 1995. With so many climbers seeking permits, adequate lead time required to fulfill the requests lengthens. The 60 day pre-registration period will provide sufficient opportunity for the Denali park staff to provide the necessary information to prospective mountaineers on the dangers they may face climbing in the park, how to prepare and equip themselves for the climb, other safety related issues and requirements concerning resource protection issues such as litter removal and human waste disposal.

When this proposed rule becomes final, it will replace the interim rule that was published on March 31, 1995, in the **Federal Register**. (60 FR 16579).

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rule making. Comments must be received on or before November 13, 1995. The NPS will review all comments and consider making changes to the rule based upon a thorough analysis of the comments.

Drafting Information

The primary authors of this rule are Dennis Burnett, Washington Office of Ranger Activities and Brenda Bussard of Denali National Park and Preserve, National Park Service.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses which compromise the nature and character of the area or causing physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, and in accord with the procedural requirements of the National Environmental Policy Act (NEPA), and by Departmental Regulations in 516 DM 6, (49 FR 21438) an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) have been prepared.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, reporting and record keeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter I, part 13 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

Subpart C—Special Regulations—Specific Park Areas in Alaska

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

§ 13.63 [Amended]

2. Section 13.63 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) *Mountain climbing.* Climbing on Mount McKinley or Mount Foraker without registering, on a form provided by the Superintendent, at least 60 days in advance of any climb is prohibited.

Dated: August 23, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–22749 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–70–P

POSTAL SERVICE

39 CFR Part 955

Rules of Practice Before the Board of Contract Appeals

AGENCY: Board of Contract Appeals, Postal Service.

ACTION: Proposed rule.

SUMMARY: This document contains proposed revisions to certain rules of practice of the Postal Service Board of Contract Appeals (Board). These revisions would implement provisions of the Federal Acquisition Streamlining Act of 1994, which amended the Contract Disputes Act of 1978, under which the Board adjudicates contract disputes. These revisions would increase the maximum amount that may be in dispute for appeals to qualify for consideration under the small claims and accelerated procedures of boards of contract appeals.

DATES: Comments must be received on or before November 13, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Judicial Officer Department, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–6100. Comments received will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dennis E. Wiessner, Jr., or J. Brett Golden, 202–268–5438.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed revisions to the rules of practice of the Postal Service Board of Contract Appeals (Board). These revisions would implement certain provisions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (FASA), which amended sections 8(f) and 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 601–613), under which the Board adjudicates contract disputes. These revisions would increase the maximum amount that may be in dispute for appeals to qualify for consideration under the small claims and accelerated procedures of boards of contract appeals.

The Postmaster General has delegated to the Board the authority to adopt and issue rules necessary to resolve contract disputes under the Contract Disputes Act of 1978. 39 CFR 955.1(d).

Effective Date

Pursuant to sections 10001 and 10002 of the FASA, the Board proposes to make the revised rules, as well as sections 2351(c) and (d) of the FASA, applicable to all pending appeals and to those appeals filed on or after October 1, 1995. However, comments will be considered for November 13, 1995.

Proposed Changes

The monetary limit of the eligibility requirement for the small claims (expedited) procedure is increased from $10,000 to $50,000 (39 CFR 955.13(b)(1), (c)(1)). The monetary limit of the eligibility requirement for the accelerated procedure is increased from $50,000 to $100,000 (39 CFR 955.13(b)(2), (d)(1), (d)(3)).

List of Subjects in 39 CFR Part 955

Administrative practices and procedure, Postal Service.

For the reasons set forth in the preamble, the Postal Service proposes to amend 39 CFR part 955 as follows:

PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

1. The authority citation for 39 CFR part 955 is revised to read as follows:

Authority: 39 U.S.C. 204, 401; 41 U.S.C. 607, 608.

2. Section 955.9 is amended by revising the second sentence to read as follows:

§ 955.9 Hearing election.

* * * In appropriate cases, the appellant shall also elect whether he desires the optional small claims (expedited) procedure or accelerated procedure prescribed in § 955.13.

§ 955.13 [Removed]

3. Section 955.13 is removed.

§ 955.36 [Redesignated as § 955.13]

4. Section 955.36 is redesignated as § 955.13 and amended by revising the first sentence of paragraphs (b)(1) and (b)(2); by revising paragraph (c)(1) and the first sentence of (c)(2)(ii) and the fourth sentence of paragraph (c)(4); by revising paragraph (d)(1) and the third sentence of (d)(3); by revising paragraph (e); and by adding paragraph (f), as follows:

§ 955.13 Optional small claims (expedited) and accelerated procedures.

* * * * *

(b) Elections to Utilize small claims (expedited) and accelerated Procedure.

(1) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. * * *

(2) In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring the decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. * * *

(c) The small claims (expedited) Procedure.

(1) This procedure shall apply only to appeals where the amount in dispute is $50,000 or less as to which the appellant has elected the small claims (expedited) procedure.

(2) * * * (ii) within 5 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. * * *

* * * * *

(4) * * * Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion of reconsideration under § 955.30.

* * * * *

(d) The accelerated Procedure.

(1) This procedure shall apply only to appeals where the amount in dispute is $100,000 or less as to which the appellant has made the requisite election.

* * * * *

(3) * * * Alternatively, in cases where the amount in dispute is $50,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. * * *

(e) Motions for Reconsideration in Cases Arising Under § 955.13. Motions for reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated procedure need not be decided within the time periods prescribed by this § 955.13 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.

(f) Except as herein modified, the rules of this part 955 otherwise apply in all aspects.

§ 955.35 [Removed]

Section 955.35 is removed.

§ 955.37 [Redesignated as 955.35]

6. Section 955.37 is redesignated as § 955.35.

7. New § 955.36 is added to read as follows:

§ 955.36 Effective Dates and applicability.

The provisions of §§ 955.9 and 955.13 took effect [date of publication of final rule in the **Federal Register**]. Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601–613), §§ 955.13 and 955.35 apply to appeals relating to contracts entered into on or after March 1, 1979. All other provisions of this part 955 took effect February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective date.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–22634 Filed 9–12–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[AD–FRL–5291–2]

Proposed Conditional Special Exemption From Requirements of the Clean Air Act for the Territory of American Samoa, the Commonwealth of the Northern Mariana Islands, and the Territory of Guam

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed actions.

SUMMARY: The Governors of the Territory of American Samoa (American Samoa), the Commonwealth of the Northern Mariana Islands (CNMI), and the Territory of Guam (Guam) each submitted a petition under section 325(a) of the Clean Air Act (the Act) for a waiver from title V of the Act. Title V requires that states, including the petitioners, adopt and submit to EPA a title V operating permits program for major sources and certain other stationary sources. Title V also requires that sources located in areas that do not adopt a state title V permitting program obtain a federal permit from the US EPA. Section 325(a) allows American Samoa, CNMI, and Guam to petition for an exemption from certain Clean Air Act requirements.

The EPA received petitions requesting an exemption from title V of the CAA from American Samoa on November 18, 1994, from CNMI on July 14, 1994, and Guam on November 21, 1994. This document describes the petition submitted by each agency, EPA's analysis, and EPA's proposed action on each petition. The EPA is proposing to grant conditional waivers from the requirement that American Samoa and CNMI adopt and submit title V operating permit programs. The EPA proposes to require the implementation of alternative programs to protect local air quality as a condition of these waivers. The EPA is proposing to grant Guam a three-year extension of the deadlines in title V. The EPA is also proposing to exempt sources from the requirement to obtain a federal title V permit during the period of the waivers, except for certain major sources of hazardous air pollutants. While this proposal addresses all three petitions, EPA's action is based on a separate evaluation of each petition.

DATES: Comments on these proposed actions must be received in writing by October 13, 1995.

ADDRESSES: Comments should be addressed to Norm Lovelace at the address indicated. Copies of the petitions and other supporting information, including air quality modeling, used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Office of Pacific Islands and Native American Programs, US EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Norm Lovelace (telephone 415/744–1599, fax 415/744–1604), Chief, Office of Pacific Islands and Native American Programs, or Ed Pike (telephone 415/744–1248), Operating Permits Section, Air and Toxics Division, at US EPA–Region IX, 75 Hawthorne Street, San Francisco, California 94105. Comments should be addressed to Norm Lovelace, mailcode E–4.

I. Background

Title V of the Act requires states to develop and submit operating permit programs by November 15, 1993. EPA has promulgated certain minimum requirements (57 FR 32250 (July 21, 1992)) that are codified at 40 Code of Federal Regulations (CFR) part 70. States must develop programs for issuing permits that contain monitoring and compliance terms and conditions that ensure sources comply with all applicable federal air regulations, and the permit issuance process must include public participation and EPA oversight. EPA is required to impose sanctions on any state, including the petitioners (see 40 CFR 70.2 definition of ''state''), that has not submitted a complete title V permit program. For any state that does not have an approved program by November 15, 1995, the EPA must promulgate, administer, and enforce a federal air permit program.

Section 325(a) of the Act allows the petitioners to request that the Administrator of EPA waive requirements of the Clean Air Act other than section 112 (Hazardous Air Pollutant or HAPs) requirements or any requirement under section 110 or part D of subchapter 1 that would be necessary to attain or maintain a national primary ambient air quality standard. The petitioners request a waiver from title V and do not request a waiver from any requirements under section 112 of the Act, including requirements that are triggered by the approval of a title V permit program. In addition, the petitions for American Samoa and CNMI commit to implementing alternative programs to protect ambient air quality, including the national ambient air quality standards.

Section 325(a) also specifies the criteria for approving exemptions: ''Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.'' EPA's determinations are based on whether the petitions meet these criteria. Although EPA is publishing its proposed action on the petitions in a single rulemaking, each action is considered a separate decision and can be considered independently. If significant comments are received pertaining to a specific petition, EPA may take final action on each petition independently.

II. Analysis and Proposed Action

A. American Samoa

1. Description of Petition and Supporting Documents

The Governor of American Samoa submitted the Government's petition on November 28, 1994. The petition consists of the following sections: 1) a description of the waiver request and geographical and political conditions; 2) a description of American Samoa's commitment to ensure attainment and maintenance of national ambient air quality standards; 3) a commitment to work with EPA to ensure that the hazardous air pollutant program under Section 112 of CAA is administered and enforced on American Samoa; 4) a description of the unique local economic burden that the title V operating permit program would create; and 5) other unique geographical, meteorological, and local factors that support the petition. The supporting information includes: 1) maps of American Samoa; 2) an emissions inventory for American Samoa; 3) screening analysis of ambient air quality impacts on American Samoa; 4) economic analysis of an operating permit program on American Samoa; and 5) newspaper articles illustrating the financial difficulties of the American Samoa Government (ASG).

2. Analysis of the Petition

EPA believes that the unique local circumstances presented in the petition satisfy the criteria in section 325(a) for granting an exemption from title V of the CAA. EPA also believes that the petition's proposed mitigating air quality program is appropriate for American Samoa and would result in air quality benefits equivalent to a title V program.

The petition makes a convincing argument that a title V operating permit program would have a unique negative economic impact on American Samoa. Implementing this program would be economically unreasonable for the American Samoa Government (ASG) and the general public due to extremely limited local resources. Only five sources have potential emissions exceeding the major source level (40 CFR 70.2) and would be subject to the program. If ASG imposed fees based on emissions as required by part 70, the two power plants run by the American Samoa Power Authority (ASPA), a semi-autonomous government utility agency, would incur most of these costs. Projected costs to be incurred by ASPA would likely be passed to its electrical consumers, which include private industry, the public and the American Samoa Government. Increased power bills to the latter two consumers would strain already limited resources. Per capita income is only $3,039 (compared to $14,420 for the mainland United States) and the population is only 49,000. The ASG has had major financial difficulties over the past years, and as the major consumer of power it has unpaid power bills of over $2 million.

The petition estimates that the total regulatory and compliance costs of the program would be $143,000. The relative economic impact of these fees would be high compared to the limited economic resources of American Samoa. Given the limited number of sources, the limitations of the ASEPA staff, the more pressing environmental priorities of American Samoa (such as safe drinking water and solid waste disposal), and the fact that the major costs will be borne by an area with limited economic resources, EPA believes that it is appropriate for ASG to focus its limited resources on an alternative permitting program, which could be expected to achieve equivalent environmental benefits. EPA believes that these economic resource constraints support American Samoa's position that the title V program is unreasonable in American Samoa and justify a more narrowly focused program.

3. Alternative Air Quality Program Proposed by American Samoa

American Samoa proposes an air quality program to address potential exceedances of the National Ambient Air Quality Standards (NAAQS). This program more appropriately addresses unique meteorological circumstances and the protection of local air quality. While the title V program is expected to increase compliance with emission limits, other mechanisms (such as source-specific SIP limits or direct enforcement of federal standards) may be a practical and effective means of controlling air pollution on American Samoa. In addition, no major sources of air toxics are identified in the petition. Major source of air toxics may require case-by-case title V permitting review for implementation of a current or future section 112 standard.

Screening model results submitted with the petition indicate that sulfur dioxide (SO_2) NAAQS exceedances may occur in the Pago Pago Harbor area. In the petition, American Samoa commits to ensuring that primary ambient air quality standards in the Pago Pago Harbor area are met. American Samoa will collect meteorological data and undertake additional refined air

modeling of the Pago Pago Harbor area. American Samoa will also require sources impacting the Pago Pago Harbor area to implement physical and operational changes if necessary to assure compliance with the NAAQS. EPA agrees with American Samoa that possible emission control strategies for correcting any sulfur dioxide NAAQS exceedances include, but are not limited to, a reduction in the sulfur content of the fuel burned, the addition of scrubbers or other control devices, a reduction in the hours of operation for some units, or a combination thereof. EPA also believes that amendments to American Samoa's State Implementation Plan (SIP) are the most practical method of imposing any controls and compliance methods that are necessary.

EPA believes that American Samoa's proposed mitigating air quality program, which is tailored to prevent and remedy potential air quality violations, will achieve equivalent benefits for air quality and is more appropriate than the title V program due to the geographic isolation, economic circumstances, and the limited number of sources in American Samoa. Furthermore, because the few sources in American Samoa do not appear to compete with mainland sources, the exempted sources will not gain a competitive advantage over sources subject to title V.

4. Conditional Waiver

EPA is proposing to exempt American Samoa from the requirement to develop a part 70 permitting program and sources on American Samoa from the requirement to apply for a part 71 permit (except when specifically required by EPA), provided that the following conditions are met. EPA is proposing that American Samoa collect complete meteorological data and complete a refined air quality modeling analysis within two years of the effective date of this rulemaking. EPA is also proposing that American Samoa require affected sources to implement changes necessary to ensure NAAQS achievement in a timely manner if the modeling demonstrates a violation of the NAAQS. EPA believes that a period of five years, which is three years from the completion of modeling by American Samoa, will allow sufficient time to implement strategies to meet the NAAQS if exceedances have occurred.

EPA is also proposing that American Samoa implement an alternative local operating permit program. The permitting program will ensure that the emission limits used to verify compliance with the NAAQS are met. At a minimum, the program should meet the guidelines established in the June 29, 1989 **Federal Register** for federally enforceable operating permit programs. These guidelines are more flexible than the title V guidelines but ensure that permits are federally enforceable on a practical and legal basis. The permits should include applicable Clean Air Act requirements, adequate compliance measures, and allow for public participation. In addition, this alternative program can be used to implement other air quality requirements.

EPA proposes to reopen the waiver if these conditions are not met or if EPA determines that implementation of a title V permitting program is necessary to ensure compliance with applicable Clean Air Act requirements and protect air quality.

B. CNMI

1. Description of Petition and Supporting Documents

The Governor of CNMI submitted the petition to EPA on July 14, 1994. The petition consists of a 15-page narrative and supporting information. The narrative portion of the petition is organized into sections which describe: (1) the purpose of the petition; (2) unique local geographical, meteorological, and economic factors; (3) major air emission sources and sources of hazardous air pollutants emissions in CNMI; and (4) information on the existing CNMI permitting regulations, which CNMI suggests as an alternative mitigating program. CNMI also submitted copies of local statutes and regulations, maps of CNMI, emissions information, and cost estimates for the title V program as supporting information.

2. Analysis of the Petition

EPA believes that the unique local circumstances presented in the petition satisfy the criteria in section 325(a) for granting an exemption from title V of the CAA. CNMI's petition states that title V is overly burdensome due to local circumstances and proposes a mitigating local permit program. The petition describes unique local factors that make the economic burden of implementing the title V permitting program greater for CNMI than for most state air agencies. CNMI's population (43,345) is far smaller than mainland state agencies. In addition, per capita income ($7,200) in CNMI is only half that of the United States. Therefore, the economic resources available to address air quality problems are much more limited than the resources available in areas under the jurisdiction of mainland state air quality agencies.

The CNMI petition states that Clean Air Act programs, particularly title V, are not necessary because ambient air quality is not impacted by emissions from stationary sources on CNMI, and that an alternative local program is sufficient to protect air quality. EPA air quality modeling conducted to evaluate this claim predicted violations of the National Ambient Air Quality Standards (NAAQS). However, EPA's analysis also shows that the alternative permitting program described by CNMI would address exceedances of the NAAQS as effectively as a title V program. CNMI's emission inventory shows that emissions result almost exclusively from internal combustion engines, and EPA believes that options other than case-by-case title V permitting of these sources (such as a SIP rule with specific control and compliance measures) would be appropriate for controlling these sources due to their similarity. In addition, none of the sources identified in the petition are identified as a major air toxics source that may require case-by-case permitting review for implementation of a current or future section 112 standard.

3. Air Quality Modeling

EPA performed screening level modeling on the main Commonwealth Utilities Company (CUC) power plant on Saipan, the main island in the CNMI and the island with the largest emission sources, to assess potential air quality problems on Saipan. EPA's SCREEN2 model predicts significant violations of the sulfur dioxide (SO_2) three-hour and 24-hour NAAQS due to low stack heights, high sulfur fuel, and the lack of control equipment. The model also indicates that violations of the eight-hour carbon monoxide (CO) and the annual nitrogen oxide (NO_X) NAAQS may occur. United States Air Force meteorological data indicate that a significant percent of the predicted violations will impact onshore areas of the island.

The SCREEN2 model does not use detailed site specific meteorological data. CNMI could choose to perform additional modeling using site specific meteorological data. EPA does not believe that the concentrations of air pollutants predicted under the SCREEN2 model would change enough using refined modeling to show compliance with the NAAQS. However, EPA believes that additional modeling may help verify the extent of the predicted SO_X NAAQS exceedances and the effectiveness of different strategies for achieving compliance with the

NAAQS. CNMI may choose to use the existing SCREEN2 modeling results or conduct additional refined modeling.

4. Alternative Permitting Program Proposed by CNMI

The CNMI proposed an alternative program to address sources of air pollution based on its current regulations and several proposed changes. CNMI updated the petition on October 20, 1994, by submitting the currently effective CNMI Air Pollution Control Regulations (CNMI Regulations). The CNMI Regulations (part V.A) require the registration of certain new and existing sources. The Director of the Division of Environmental Quality may allow the construction or modification of a major new source if the source will not endanger the attainment or maintenance of NAAQS or violate the allowable air quality increments in 40 CFR 52.21 (c) and (d) (CNMI Regulations part V.E). EPA interprets these rules to prohibit the air quality violations predicted by the screening model. EPA is conditioning the waiver to require that CNMI fully implement and enforce these currently effective regulations, including provisions that require sources built after the effective date of the regulations to apply physical and operational controls to assure that NAAQS and PSD increments are not exceeded.

The CNMI petition also proposed revisions to the CNMI program that would provide elements of an operating permit program similar to the title V permitting program. On February 17, 1995, CNMI committed to obtain additional authority to enforce permits and provide public process if required by EPA. The petition also stated that CNMI could modify the program to include all applicable Clean Air Act requirements in the program and require monitoring and/or recordkeeping requirements to ensure that sources comply with their emission limits. Therefore, EPA is proposing that the CNMI adopt these elements in the alternative operating permit program and submit the adopted regulations as a revision to CNMI's SIP as a condition to granting the waiver. The CNMI petition stated that CNMI could collect fees to fund the permitting program, but did not commit to collecting these resources. EPA believes that CNMI should have the flexibility to determine appropriate funding mechanisms, but that sufficient resources must be available to fund an alternate program.

5. Conditional Waiver

EPA is proposing to exempt CNMI from the requirement to develop a part 70 permitting program and sources on CNMI from the requirement to apply for a part 71 permit (unless specifically required by EPA) on the condition that CNMI implement the alternative permitting program. This would require that CNMI implement existing air quality regulations addressing potential existing violations of air quality standards.

EPA is proposing that CNMI may conduct any additional modeling it believes is necessary to yield more site-specific ambient emission estimates. EPA is proposing a 1-year deadline for the completion of any such modeling. CNMI's petition does not address what meterological data is available, but EPA will consider any new information or comments that address whether additional time would be necessary to collect meterological data or whether existing sources of meterological data are acceptable in the final rulemaking.

EPA is also proposing that CNMI submit a State Implementation Plan (SIP) to address any confirmed violations within two years of the effective date of the waiver, and ensure compliance with the NAAQS within four years of the effective date of this waiver. In addition, EPA is proposing that CNMI fully adopt enhancements to its existing operating permit program and implement the alternative operating permit program within two years of the effective date of the waiver and submit these requirements as revisions to its SIP rules.

EPA will reopen the waiver if these conditions are not met or if EPA determines that implementation of a title V permitting program is necessary to ensure compliance with applicable Clean Air Act requirements and protect air quality. If EPA determines that any area will not meet the NAAQS, as determined under CAA section 110, within four years of the effective date of the waiver, EPA will redesignate that area non-attainment and require the appropriate attainment plans.

C. Guam

1. Description of Petition and Supporting Documents

The Governor of Guam submitted a petition to EPA on November 18, 1994. The petition consists of a 12-page narrative and 5 supporting exhibits. The narrative portion of the petition is organized into sections which describe: 1) the petition, the type of waiver requested, and the basis for the petition; 2) compliance with primary ambient air quality standards; 3) compliance with Section 112 of the CAA; 4) the local economic effect of a title V operating permit program; and, 5) additional unique geographical, meteorological, and local factors. The supporting information includes: 1) a map of Guam; 2) an emissions inventory; 3) source profiles and estimates of their actual and potential emissions; and, 4) an economic analysis of an operating permit program on Guam.

2. Analysis of Guam's Petition

EPA believes that the unique local circumstances presented in the petition justify an extension of the deadlines in title V but do not warrant a permanent exemption from title V of the Act. Guam's petition requests a waiver based on several factors. The petition states that implementing title V would be a burden for Guam and that Guam currently lacks the technical resources to implement the program. In addition, the petition states that title V is not necessary to ensure compliance with air quality standards.

EPA agrees that Guam needs additional technical resources to implement a title V permitting program and believes a three-year extension in the deadline to adopt a title V program would allow the Guam Environmental Protection Agency (GEPA) to secure additional training and technical resources. In addition, an extension would allow Guam the option of saving resources by adopting the federal operating permit rule (currently proposed at 60 FR 20804; to be codified at 40 CFR part 71) by reference or by using a state or local rule as a guideline rather than developing their own permitting rule. EPA believes that three years will allow GEPA sufficient time to acquire the technical resources to develop and implement a title V permitting program.

While the petition states that imposing a title V permit program would impose an economic burden, the data does not support this assertion. Although businesses on Guam are unlikely to relocate due to these fees, title V fees could have an impact on small businesses. However, EPA believes that part 70 gives Guam flexibility to assess different fees to different sources based on the expected economic burden. The petition also states that per capita income in Guam is less than per capita income on the mainland United States ($9,928 versus $14,420 in 1990 dollars). EPA does not believe that the title V permitting program would have a noticeable economic impact on citizens. For instance, Guam's petition estimates that

title V costs to residential and local government electric users is $183,000 (assuming the local utility increase rates to cover 100% of its permit fees and other permit costs) for a population of 133,000. For these reasons, EPA does not believe that implementation of a title V permitting program on Guam is economically infeasible.

In addition, many significant sources of air pollution are located on Guam. The petition identified 14 title V sources with actual emissions in excess of 100 tons per year and 55 sources with actual emissions of up to 85 tons per year, some of which may be subject to title V because they have a potential to emit exceeding the major source levels (see 40 CFR part 70.2). Guam has more title V sources than the other two petitioners and more title V sources than most State and local agencies in EPA Region IX. Air emissions on Guam result mainly from equipment needed to generate electric power, including boilers, fuel-oil storage tanks, diesel engines and combustion turbines. According to Guam's petition, the major pollutant emitted in 1993 was SOx, with 12,500 tons from the largest source and 5,570 from the second largest source. The total emissions inventory of 30,490 tons per year was larger than the other areas requesting a waiver and larger than 32 of the 40 State and local agencies in EPA Region IX that have completed emissions inventories for their title V sources. EPA believes that the large point sources on Guam, including major air toxics sources, that would be subject to a title V program have a greater impact on local air quality than sources on American Samoa and CNMI.

3. Alternative Air Quality Program

Title V is intended to implement Clear Air Act programs that are designed to protect air quality. Guam's petition does not commit to or propose an alternative operating permit or compliance program that would ensure that air quality protections, such as air toxics controls and emission limits for criteria pollutants, are achieved. Therefore, it is not clear from the petition what procedures Guam would institute to ensure that Clean Air Act objectives are achieved.

4. Conditional Extension

EPA is proposing to grant Guam an extension of the deadline for developing and submitting a title V permitting program for three years from the effective date of this rulemaking action, but not later than November 15, 1998, which is five years beyond the statutory deadline for submitting a complete title V permitting program. The Clean Air Act originally gave state and local agencies three years to develop and submit operating permit programs, and EPA believes that this time period is sufficient for Guam to acquire sufficient technical resources and to utilize EPA's part 71 regulation or develop its own program using an approved state or local program as a model.

EPA is also granting title V sources on Guam a waiver from the effective date of the part 71 permit program until five years from the effective date of this rulemaking action, but not later than November 15, 2000, providing that Guam submits a timely and complete permitting program. This two year difference between the deadline for submitting a timely and complete title V program and the effective date of the part 71 program will allow EPA time to review Guam's program and allow Guam an opportunity to correct any incomplete areas of their program or any approval issues in their program. If a timely and complete program is not submitted by Guam, the part 71 program will be effective three years after the effective date of this rulemaking, or November 15, 1998, whichever is earlier. As proposed, the part 71 regulation requires that sources submit permit applications within one year of the effective date unless EPA establishes an earlier submittal date. For more information, see the part 71 proposal at 60 FR 20804 (April 27, 1995).

D. Hazardous Air Pollutant Requirements for American Samoa, CNMI, and Guam

1. Effective Date of Requirements Triggered by Title V

The Act prohibits section 325 waivers from section 112 requirements, and the petitioners do not request a waiver from section 112 requirements. This notice does not waive any requirements under section 112 of the Act, including case-by-case Maximum Achievable Control Technology (MACT) determinations under sections 112(g) and 112(j) of the Act. New and modified major HAP sources must apply MACT under section 112(g) if EPA has not promulgated an applicable National Emission Standard for Hazardous Air Pollutants (NESHAP; NESHAPs promulgated after the 1990 Amendments to the Act are also commonly referred to as MACT standards) for the source category. Existing major HAP sources must apply for a title V permit containing MACT under section 112(j) if EPA misses a NESHAP deadline for their source category by 18 months (59 FR 26429). These two requirements are, in the absence of a section 325 waiver, triggered by the effective date of a title V program.

EPA is proposing to grant the waivers on the condition that these section 112 requirements will be implemented from the effective date of the waiver. Therefore, EPA is proposing that the effective date of this waiver constitute the effective date of a title V program for American Samoa, CNMI and Guam for the purposes of triggering section 112(g) and 112(j) requirements. While no sources subject to the requirements of the 112(g) and 112(j) have yet been identified, this condition will ensure that sources built or identified in the future will be subject to these hazardous air pollutant reductions.

2. Implementation of Section 112 requirements

EPA will issue part 71 permits to any source subject to the 112(g) and 112(j) programs in American Samoa, CNMI, and Guam under today's proposal. Sources that are required to apply for a 112(g) or 112(j) determination would be required to submit a complete part 71 application to EPA and EPA would issue a permit that includes 112(g) and 112(j) requirements under the part 71 regulations. While the final part 71 rule has not yet been promulgated, EPA is not aware of any sources that would be subject to this provision in the near future and anticipates that the part 71 rule (see 60 FR 20804 for proposal) will be finalized before any sources become subject. For instance, EPA expects that the 112(j) provisions will not be effective before 1997. In addition, EPA has stated in its February 14, 1995 interpretive notice (60 FR 8333) that the requirements of 112(g) are not effective until EPA promulgates a final 112(g) rule. EPA anticipates that the part 71 rule will be promulgated before any case-by-case determinations in American Samoa, CNMI or Guam are necessary. EPA will consider any comments received on the appropriate mechanism for implementing case-by-case MACT determinations, and is specifically soliciting comments on the appropriate mechanism for implementing case-by-case MACT if promulgation of the part 71 rulemaking is delayed. EPA requests information on any source that may be subject to section 112(g) in the next two years in case the part 71 promulgation date is delayed past the effective date of this waiver and the promulgation of the 112(g) rule.

EPA is currently considering whether major sources of air toxics subject to EPA MACT standards should also be subject to permitting under part 71 in

the absence of a approved local title V program. Future MACT standards may utilize title V permits (i.e. a part 70 or part 71 permit) to establish specific compliance requirements or to allow operators flexible options for meeting emission limits. EPA is also considering whether title V permits are necessary to implement section 129(e) municipal waste incinerator standards (see proposals at 59 FR 48198–48228 (NSPS) and 48228–48258 (state programs for existing sources)), which cover both criteria pollutants and hazardous air pollutants. The proposal does not currently require these sources to obtain title V permits. EPA will consider any comments on this issue and determine in the final rulemaking whether proper implementation of the section 112 and section 129(e) standards require the permitting of subject sources under title V.

Other section 112 requirements, such as 112(d) MACT standards, automatically apply to all subject sources in American Samoa, CNMI, and Guam and are enforceable by EPA. EPA will develop appropriate mechanisms with the petitioners to identify subject sources and ensure that sources comply with the standards. The petitioners have demonstrated that they currently lack the technical resources to develop a title V program, and EPA believes that greater technical resources will be necessary to determine case-by-case MACT limits for HAPs. If the petitioners develop the necessary technical resources and meet other specified criteria, they may apply for delegation of the section 112(g) and 112(j) programs by developing a title V program or applying under section 112(l) of the Act (58 FR 62262 (November 16, 1993)).

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of these proposed waivers. Copies of the petitions, modeling data, and other information relied upon for the proposed approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 13, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the waiver proposed today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves waivers requested by the petitioners to reduce the cost of implementing the Clean Air Act. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 69

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Operating permits, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 25, 1995.

Felicia Marcus,

Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 69—[AMENDED]

1. The authority citation for part 69 continues to read as follows:

Authority: Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

Subpart A—Guam

2. Subpart A is amended by adding § 69.13 to read as follows:

§ 69.13 Title V extension.

(a) The Administrator of the EPA grants the Territory of Guam an extension until three years from [the effective date of the final rule], but no later than November 15, 1998, from the requirement to develop a title V permit program by November 15, 1993. The Administrator of the EPA grants all title V sources located in Guam a waiver, except as described in paragraph (b) of this section, from the requirement to apply for and obtain a part 71 permit. The part 71 waiver shall expire on the earlier of three years from the earlier of [the effective date of the final rule], or November 15, 1998. If Guam does not submit a complete permit program, as defined in 40 CFR part 70, by the expiration date of the waiver, then 40 CFR part 71 shall become effective for all subject sources in Guam on that date. 40 CFR part 71 shall become effective for all sources on Guam two years from the expiration of the waiver if Guam submits a timely and complete program but does not have an approved program on that date.

(b) All section 112 requirements shall be implemented during the period of the waiver. Sections 112 (g) and (j) of the Act shall apply to all sources on Guam during the term of this waiver, and any subject source shall submit a timely part 71 permit application to EPA requesting a case-by-case 112(g) or 112(j) MACT determination. In addition, Guam will develop a Memorandum of Understanding with EPA to identify sources of hazardous air pollutants (HAPs).

Subpart B—American Samoa

3. Subpart B is amended by adding § 69.22 to read as follows:

§ 69.22 Title V waiver.

(a) The Administrator of the EPA grants the Territory of American Samoa an exemption from the requirement to

develop, implement, and submit for approval a title V operating permit program and grants title V sources located in American Samoa an exemption from the requirement to apply for and obtain a part 71 permit except as described in paragraph (a)(3) of this section. This waiver is subject to the following conditions:

(1) American Samoa shall implement the following program to protect attainment of National Ambient Air Quality Standards as a condition of the waiver:

(i) American Samoa shall collect complete meteorological data and complete refined air quality modeling for the Pago Pago Harbor and submit such data and modeling results to EPA within two years of [effective date of the final rule].

(ii) American Samoa shall address any NAAQS exceedances discovered through the modeling results with a State Implementation Plan (SIP) that ensure compliance with the NAAQS within the earlier of three years from the date such results are submitted to EPA and five years from [the effective date of the final rule]. This plan shall be submitted by three years from [the effective date of the final rule].

(2) American Samoa shall develop, implement, and submit to EPA for approval an alternative permit program that meets the requirements specified in EPA's June 28, 1989 guidelines.[1] The program must be submitted within two years of [effective date of the final rule] and include the following elements:

(i) Permit content:

(A) Permits must contain and ensure compliance with all applicable federal requirements, as defined under section 40 CFR 70.2; and

(B) Contain monitoring, recordkeeping and reporting requirements sufficient to assure compliance with applicable federal requirements;

(ii) The collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program;

(iii) Public notice and a 30-day public comment on each major source permit, including an opportunity for EPA review;

(iv) Civil and criminal penalties up to $10,000 per day per violation; and

(v) A schedule for issuing permits to all major sources, as defined under 40 CFR 70.2, within three years of EPA approval of the alternate operating program.

(3) All section 112 requirements shall be implemented during the period of the waiver. Sections 112(g) and (j) of the Act shall apply to all sources on American Samoa during the term of this waiver, and any subject source shall submit a timely part 71 permit application to EPA requesting a case-by-case 112(g) or 112(j) MACT determination. American Samoa shall develop a Memorandum of Understanding with EPA to identify sources of hazardous air pollutants (HAPs).

(b) EPA may modify or revoke this waiver for cause, and shall reopen the waiver if the conditions under paragraph (a) of this section are not met.

Subpart C—Commonwealth of the Northern Mariana Islands

4. Subpart C is amended by adding § 69.32 to read as follows:

§ 69.32 Title V exemption.

(a) The Administrator of the EPA grants the Commonwealth of the Northern Mariana Islands an exemption from the requirement to develop, implement, and submit for approval a title V operating permit program and grants title V sources located in CNMI an exemption from the requirement to apply for and obtain a part 71 permit except as described in paragraph (a)(3) of this section. This waiver is subject to the following conditions:

(1) CNMI shall implement the following program to protect attainment of National Ambient Air Quality Standards as a condition of the waiver:

(i) CNMI shall enforce its January 19, 1987 Air Pollution Control (APC) regulations, including the requirement that all new or modified sources comply with the NAAQS and Prevention of Significant Deterioration (PSD) increments.

(ii) CNMI may conduct air emissions modeling, using EPA guidelines, for power plants located on Saipan to assess EPA's preliminary determination of non-compliance with the SOx NAAQS. CNMI shall complete and submit any additional modeling to EPA within one year from [the effective date of the final rule] to determine whether existing power plants cause or contribute to violation of the NAAQS and PSD increments in the APC and 40 CFR 52.21.

(iii) If CNMI's additional modeling demonstrates non-attainment with NAAQS based on EPA guidelines, or if CNMI elects to accept EPA's preliminary determination that the NAAQS have been exceeded, CNMI shall submit a revised State Implementation Plan that ensures compliance with the NAAQS. The Plan shall be submitted within one year from [the effective date of the final rule] or, if CNMI elects to conduct additional modeling, within two years of [the effective date of the final rule]. CNMI shall take appropriate corrective actions through the SIP to demonstrate compliance with applicable NAAQS within four years from [the effective date of the final rule].

(2) CNMI shall develop, implement, and submit to EPA for approval into CNMI's SIP an alternative permit program that meets the requirements specified in EPA's June 28, 1989 guidelines. The program shall be submitted within two years of [the effective date of the final rule] and include the following elements:

(i) Permit content requirements:

(A) Permits must contain and ensure compliance with all applicable federal requirements, as defined under section 40 CFR 70.2; and

(B) Contain monitoring, recordkeeping and reporting requirements sufficient to assure compliance with applicable federal requirements;

(ii) The collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program;

(iii) Public notice and a 30-day public comment on each major source permit, including an opportunity for EPA review;

(iv) Civil and criminal penalties up to $10,000 per day per violation; and

(v) A schedule for issuing permits to all major sources, as defined under 40 CFR 70.2, within three years of EPA approval of the alternate operating program.

(3) All section 112 requirements shall be implemented during the period of the waiver. Sections 112 (g) and (j) of the Act shall apply to all sources on CNMI during the term of this waiver and all subject sources shall submit a timely application for a part 71 permit. CNMI shall develop a Memorandum of Understanding with EPA to identify sources of hazardous air pollutants (HAPs).

(b) EPA may modify or revoke this waiver for cause, and shall reopen the waiver if the conditions under paragraph a are not met. This exemption from requirements of title V of the Act shall continue until modified or terminated through rulemaking procedures.

[FR Doc. 95–22490 Filed 9–12–95; 8:45 am]

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[1] These guidelines were published in the **Federal Register** on June 28, 1989 at 54 FR 27282.

40 CFR Part 70

[AL01; FRL–5295–5]

Clean Air Act Proposed Interim Approval of Operating Permits Program; Alabama Department of Environmental Management, Jefferson County Department of Health, and the City of Huntsville Department of Natural Resources and Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes source category-limited interim approval of the State of Alabama Department of Environmental Management (ADEM) and the Jefferson County Department of Health (JCDH) operating permits programs. The EPA also proposes interim approval of the City of Huntsville Department of Natural Resources and Environmental Management (City of Huntsville) operating permits program. These proposed approvals are for the purpose of complying with Federal requirements which mandate that States develop and submit to EPA programs for issuing operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by October 13, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at EPA Region 4 Office listed below. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Title V Program Development Team, Air Programs Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE, Atlanta, Georgia 30365, (404) 347–3555, Ext. 4170.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules that define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the State's submission is materially changed during the one-year review period, 40 CFR Part 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional material. The EPA received title V operating permits program submittals from the ADEM, JCDH, and City of Huntsville on December 15, 1993; December 14, 1993; and November 15, 1993, respectively. The ADEM provided EPA with additional material in supplemental submittals dated March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995. The JCDH and City of Huntsville provided EPA with additional material in supplemental submittals dated July 14, 1995, and July 20, 1995, respectively. Because these supplements materially changed the title V program submittals, EPA has extended the review period and will work expeditiously to promulgate a final decision on all programs.

The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. Where a State requests source category-limited interim approval and demonstrates compelling reasons in support thereof, EPA may also grant such an interim approval. If EPA has not fully approved a program by two years after November 15, 1993, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the ADEM, JCDH, and City of Huntsville would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the ADEM, JCDH, and City of Huntsville. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval.

Following final interim approval, if the ADEM, JCDH, or City of Huntsville failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the ADEM, JCDH, or City of Huntsville then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that a complete corrective program had been submitted. Moreover, if the Administrator found a lack of good faith on the part of the ADEM, JCDH, or City of Huntsville, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the department had come into compliance. In any case, if, six months after application of the first sanction, the ADEM, JCDH, or City of Huntsville still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove the ADEM, JCDH, or City of Huntsville's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the ADEM, JCDH, or City of Huntsville had submitted a revised program, and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the ADEM, JCDH, or City of Huntsville, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the department had come into compliance. In all cases, if, six months after EPA applied the first sanction, the ADEM, JCDH, or City of Huntsville had not submitted a revised program that EPA had determined corrected the

deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if the ADEM, JCDH, or City of Huntsville has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to the ADEM, JCDH, or City of Huntsville's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal permits program for the ADEM, JCDH, or City of Huntsville upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

The EPA has concluded that the operating permits programs submitted by the ADEM, JCDH, and City of Huntsville substantially meet the requirements of title V and part 70, and proposes to grant interim approval to the programs. For detailed information on the analysis of the State's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

Pursuant to section 502(d) of the Clean Air Act as amended (1990 Amendments), the Governor of each State must develop and submit to the Administrator an operating permits program under State or Local law or under an interstate compact meeting the requirements of title V of the Act. The ADEM, JCDH, and City of Huntsville requested, under the signature of James W. Warr, Director of the ADEM and governor's designee, interim approval to administer the State and Locals operating permits program submittals in all areas of the State of Alabama with the exception of Indian reservations and tribal lands. The ADEM and JCDH also requested source category-limited interim approval.

The ADEM, JCDH, and City of Huntsville operating permits program submittals do not assert jurisdiction over Indian lands or reservations for purposes of 40 CFR part 70 and title V. The EPA will, at a future date, conduct a Federal title V operating permits program governing title V sources of air emissions on Indian lands and reservations in Alabama.

The ADEM submittal, provided as Section 1—''Complete Program Description,'' addresses 40 CFR 70.4(b)(1) by describing how the ADEM intends to carry out its responsibilities under the part 70 regulations. The JCDH and City of Huntsville submittals also provided descriptions of how they intend to carry out their responsibilities under the part 70 regulations. They are included in Section 1 of the JCDH submittal and Section 2 of the City of Huntsville submittal. The program descriptions have been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the attorney general (or the attorney for the State air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The ADEM, JCDH, and City of Huntsville have submitted legal opinions showing adequate legal authority as required by Federal law and regulation. However, their legal opinions also state that the ADEM, JCDH, and City of Huntsville do not have adequate criminal authority as required by 40 CFR 70.11(a)(3)(ii)–(iii). This lack of criminal authority precludes the ADEM, JCDH, and City of Huntsville from obtaining full approval of their title V programs.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the implementation of the permit program. Section 2 of the ADEM submittal, Attachment I of the JCDH submittal, and Section 8 of the City of Huntsville submittal include the permit application forms. The permit application forms meet the requirements of 40 CFR 70.5(c).

2. Regulations and Program Implementation

The ADEM submitted Regulation 335–3–16 (''Major Source Operating Permit'') and Regulation 335–1–7 (''Air Division Operating Permit Fees'') for implementing the State part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was included in Sections 3 and 4 of the ADEM submittal. The JCDH submitted Chapter 18 (''Major Source Operating Permits'') and Chapter 16 (''Operating Permit Fees'') of the Air Pollution Control Rules and Regulations for implementing their part 70 program. Sufficient evidence of their procedurally correct adoption was included in Attachment 3 of the JCDH submittal. The City of Huntsville submitted Regulations 3.1 (''General Provisions''), 3.6 (''Permit Application Fees''), 3.7 (''Major Source Operating Permit Annual Emissions Fees''), and 3.9 (''Major Source Operating Permit'') of the Air Pollution Control Rules and Regulations for implementing their part 70 program. Sufficient evidence of their procedurally correct adoption was included in Section 4 of the City of Huntsville's submittal. Copies of all applicable State/Local statutes and regulations that authorize the part 70 program, including those governing State/Local administrative procedures, were included with the submittals.

The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section 3 of the ADEM submittal: (A) Applicability requirements, [40 CFR 70.3(a)]: 335–3–16–.03; (B) Permit application requirements, [40 CFR 70.5]: 335–3–16–.04; (C) Provisions for permit content, [40 CFR 70.6]: standard permit requirements: 335–3–16–.05(1); permit duration: 335–3–16–.05(2); monitoring and related recordkeeping and reporting requirements: 335–3–16–.05(3); compliance requirements: 335–3–16–.06 and .07; (D) Provisions for permit issuance, renewals, reopenings and revisions, [40 CFR 70.7]: 335–3–16–.12 and 335–3–16–.13; and (E) Permit review by EPA and affected State, including public participation [40 CFR 70.6]: 335–3–16–.15.

The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Attachment 3 of the JCDH submittal: (A) Applicability requirements, [40 CFR 70.3(a)]: Regulation 18.3; (B) Permit application requirements, [40 CFR 70.5]: Regulation 18.4; (C) Provisions for permit content, [40 CFR 70.6]: standard permit requirements: Regulation 18.5.1; permit duration: Regulation 18.5.2; monitoring and related recordkeeping and reporting requirements: Regulation 18.5.3; compliance requirements: Regulations 18.7 and 18.7; (D) Provisions for permit issuance, renewals, reopenings and revisions, [40 CFR 70.7]: Regulations 18.12 and 18.13; and (E) Permit review by EPA and affected State, including public participation [40 CFR 70.6]: Regulation 18.14.

The following requirements, set out in EPA's part 70 operating permits program review, are addressed in Section 4 of the City of Huntsville submittal: (A) Applicability requirements, [40 CFR 70.3(a)]: Regulation 3.9.1; (B) Permit application requirements, [40 CFR 70.5]: Regulation 3.9.2; (C) Provisions for permit content, [40 CFR 70.6]: standard permit requirements: Regulation 3.9.5(a);

permit duration: Regulation 3.9.5(b); monitoring and related recordkeeping and reporting requirements: Regulations 3.9.5(c), 3.9.5(d) and 3.9.5(e); compliance requirements: Regulations 3.9.6 and 3.9.7; (D) Provisions for permit issuance, renewals, reopenings and revisions, [40 CFR 70.7]: Regulations 3.9.10 and 3.9.11; and (E) Permit review by EPA and affected State, including public participation [40 CFR 70.6]: Regulation 3.9.13.

Alabama statutes 22–22A–5(18) and (19) provide civil enforcement authority consistent with 40 CFR 70.11, including authority to recover penalties and fines in a maximum amount of not less than $10,000 per day per violation. However, current statutes do not provide adequate authority to assess monetary criminal penalties as required by the Act. Section 70.11(a)(3) (ii) and (iii) require criminal fines recoverable against any person who knowingly violates any applicable requirement, any permit condition, or any fee or filing requirement; knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit; or who knowingly renders inaccurate any required monitoring device or method. These fines shall be recoverable in a maximum amount of not less than $10,000 per day per violation. Section 22–28–22(d) of the Alabama Air Pollution Control Act provides that any person who knowingly violates or fails or refuses to obey or comply with that chapter or who knowingly submits any false information under that chapter shall be guilty of a misdemeanor and, upon conviction, may be sentenced to hard labor for not more than a year. To receive full program approval, the State of Alabama must amend its state law to provide for adequate criminal fines consistent with 40 CFR 70.11.

The ADEM title V program will implement a two-step process for application completeness, first determining an application to be administratively complete, then requiring application updates as needed to support draft permit preparation. The ADEM has committed in a letter to EPA dated August 28, 1995, to requiring initial applications that: (1) define the part 70 applicable requirements and major/minor source status, (2) certify compliance status with respect to all applicable requirements, (3) allow the permitting authority to determine the approved permit issuance schedule, and (4) include certifications of application truth, accuracy, and completeness. The EPA notes that this type of flexibility is appropriate and has outlined guidance in section II.D. of the July 25, 1995, White Paper for Streamlined Development of Part 70 Permit Applications. The JCDH and City of Huntsville programs require all title V sources to submit complete applications within 12 months of interim approval.

Section 70.5(d) requires that any application form, report, or compliance certification submitted pursuant to the title V regulations shall contain a certification by a responsible official that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. ADEM Regulation 335–3–16–.04(9)(a) (JCDH Regulation 18.4.9(a) and City of Huntsville Regulation 3.9.4(a)) satisfies this requirement. ADEM Regulation 335–3–16–.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) adds the following condition: ''Certification for completeness shall not be required for initial applications that will not be processed in the first year the regulations in this chapter are effective.'' Since applications will be received from all sources by the end of the first year following program approval, and these applications will meet the requirements listed above, ADEM Regulation 335–3–16–.04(9)(b) (JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b)) must be deleted from the State's regulations.

The ADEM and JCDH define ''insignificant activity'' as any air emission or air emissions unit at a plant that has the potential to emit less than 5 tons per year of any criteria pollutant or less than 1,000 pounds per year of any hazardous air pollutant (HAP). The City of Huntsville's program defines ''insignificant activity'' as any air emission or air emissions unit at a plant that the Director has determined to be insignificant and has been included by the Director on a list of insignificant emission levels or insignificant emissions units. All three programs require that insignificant activities be listed in the permit application forms. The programs also define ''trivial activity'' as any air emission from a unit that is considered inconsequential, as determined by the Director/Health Officer, and do not require that trivial activities be listed in the permit application forms. To obtain full approval, the program regulations must clarify that emissions thresholds for individual activities or units that are exempted will not exceed the lesser of 1,000 pounds per year or section 112(g) de minimis levels for HAPs. The State may, however, set higher levels of emissions thresholds upon demonstration that the higher levels are insignificant.

The ADEM, JCDH, and City of Huntsville programs provide that the Director/Health Officer will maintain a list of air emissions or air emissions units that are considered to be insignificant activities and a list of air emissions units or changes in air emissions that have been determined to be trivial. The ADEM, JCDH, and City of Huntsville programs do not include the list of insignificant activities as part of their regulations nor do they require review and approval of them by EPA. Section 70.5(c) states that EPA may approve, as part of a State program, a list of insignificant activities and emissions levels which need not be included in the permit applications. Under part 70, a State must request and EPA may approve as part of that State's program any activity or emission level that the State wishes to consider insignificant. To obtain full approval the State and the local agencies must revise their approach on insignificant activities such that the list is made available for EPA and public review and comment each time the list is revised.

The ADEM, JCDH, and City of Huntsville programs also lack assurance that insignificant activities will not be exempted from title V permitting requirements or excluded from major source applicability determinations. Section 70.5(c) states that a part 70 permit application ''may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved * * *'' To obtain full approval, the State and the Local agencies must revise their regulations consistent with section 70.5(c) to ensure that emissions units with applicable requirements will not be exempted from title V permitting requirements or major source applicability determinations, even if listed on an approved list of insignificant activities.

Sections 70.4(b)(3)(iii) and 70.6(a)(2) state that operating permits programs must issue permits for a fixed term of five years in the case of permits with acid rain provisions and issue all other permits for a period not to exceed five years, except for permits issued for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act. ADEM Regulation 335–3–16–.05(2)(c) (JCDH Regulation 18.5.2(c) and City of Huntsville Regulation 3.9.5(b)(3)) states: ''Permits which are issued for new emission units before the unit becomes operational shall be effective for five years after operation of the unit

commences.'' The EPA interprets this provision to mean that facilities may be issued ''merged'' new source review (NSR)-operating permits such that an operating permit has a future effective date, and the expiration date would be five years from the effective date. Operating permits would not be issued with a term longer than five years (except for the case of solid waste incineration units). A ''merged'' NSR-operating permit is not a title V permit until the source commences operation. Also, the title V permit will not become effective if new requirements become applicable to the source (or if other factors change that would render the operating permit invalid) until the permit is revised to reflect these changes.

The ADEM, JCDH, and City of Huntsville rules provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(i). However, the following provisions regarding trading of emissions under a Federally enforceable emissions cap are not provided for:

(a) The program shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all standard permit requirements and compliance requirements, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a Federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. [See 40 CFR Part 70.4(b)(12)(iii)]

(b) The permit application shall include additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source or to define permit terms and conditions for the trading of emissions increases and decreases in the permitted facility. [See 40 CFR Part 70.5(c)(7)]

(c) The permit shall include terms and conditions, if the permit applicant requests them, for the trading of emission increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case by case approval of each emissions trade. [See 40 CFR Part 70.6(a)(10)]

As a prerequisite for full program approval, the ADEM, JCDH, and City of Huntsville regulations must rectify this lack of flexibility on emissions trading procedures. However, EPA notes that the flexibility provisions of 40 CFR part 70 are under revision due to litigation on the rule. The EPA will allow the State/local programs to make these changes according to the revisions to part 70 when published in order to avoid duplicative rulemaking.

ADEM Regulation 335–3–16–.04(8)(b)(3) (JCDH Regulation 18.4.8(c)(3) and City of Huntsville Regulation 3.9.3(c)(3)) states that the permit application shall include ''emission rates of all pollutants in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director.'' The State cannot be granted authority to approve alternatives to standard reference test methods that are specified by applicable requirements. Performance tests shall be conducted in accordance with the procedures set forth in 40 CFR Parts 60, 61 and 63 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent or alternate test methods as specified in 40 CFR 60.8(b)(2) and (3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii), the State may approve minor changes in methodology provided these changes are reported to EPA. While this is not a change to current practice, full program approval of the ADEM, JCDH, and City of Huntsville Rules will require deletion of the Department Director's discretion in approving alternatives to standard reference test methods.

ADEM Regulation 335–3–16–.13(4) (JCDH Regulation 18.13.4 and City of Huntsville Regulation 3.9.11(d)) requires that significant modifications be incorporated into operating permits by the same procedures required for an initial permit application, including public participation, review by affected States, and review by EPA. The rule also defines significant modifications as changes that result in a net emissions increase of any of the pollutants and levels listed in ADEM Regulation 335–3–14–.04 or .05, or any modifications under NSPS or NESHAP. This definition of significant modifications is deficient in that 40 CFR section 70.7(e)(4)(i) requires, at a minimum, the State program to consider significant modifications to include every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions. As a prerequisite for full program approval, the ADEM, JCDH, and City of Huntsville Rules must be revised to make this clarification to its definition of significant modifications. However, EPA notes that the permit revision requirements of 40 CFR part 70 are under revision due to litigation on the rule. The EPA will allow the State/local programs to make these changes according to the revisions to part 70 when published in order to avoid duplicative rulemaking.

ADEM Regulation 335–3–16–.13(1) (JCDH Regulation 18.13.1 and City of Huntsville Regulation 3.9.11(a)) contains the requirements of 40 CFR 70.7(d) for administrative amendments, but does not require the Administrator's approval for similar changes allowed by this chapter. This is inconsistent with 40 CFR 70.7(d)(1)(vi) which requires that, in order for changes other than those specified in 40 CFR 70.7(d)(i) through (v) to be made as administrative amendments, they must first be determined by the Administrator, as part of the approved part 70 program, to be similar to those specified in 70.7(d)(1) (i) through (iv). For full approval, ADEM Regulation 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program.

ADEM Regulation 335–3–16–.13(1)(a)6 states that an administrative permit amendment is a permit revision that ''incorporates into a permit issued under this chapter the requirements from preconstruction review permits authorized under this Administrative Code, provided that the process used meets procedural requirements substantially equivalent to the requirements of ADEM Admin. Code r. 335–3–16–.12 and 335–3–16–.14 of this chapter * * *.'' This rule lacks the requirement of 40 CFR 70.7(d)(1)(v) for permit review by EPA and affected states. For full program approval, ADEM Regulation 335–3–16–.13(1)(a)6 must be revised to include the required EPA and affected states review provisions.

The Alabama Air Pollution Control Act, section 22–28–13, provides the ADEM, JCDH, and City of Huntsville with authority to grant individual variances beyond the limitations prescribed in the Alabama Air Pollution Control Act. This authority is exercised whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement, or order of the commission would impose serious hardship without equal or greater benefits to the public and that the emissions occurring, or proposed to occur, do not endanger or tend to endanger human health or safety,

human comfort, or aesthetic values. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no action on this provision of State law. The EPA has no authority to approve provisions of State law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements in which it is based.''

The complete program descriptions submitted by the ADEM, JCDH, and City of Huntsville and the Technical Support Documents (TSDs) for each program are available for review of more detailed information. The TSDs contain detailed analysis of the programs and describe the manner in which the programs meet all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year, consumer price index (CPI) adjusted from 1989. The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.''

The ADEM and JCDH have adopted the ''presumptive minimum'' of $25 per ton (annually adjusted by the CPI), for each regulated pollutant except carbon monoxide. Also, fees will be assessed on the first 4,000 tons per regulated pollutant per facility. The City of Huntsville has also adopted the $25 per ton (annually adjusted by the CPI). In addition to the emissions-based fees, the City of Huntsville will collect permit application fees. Permit application fees from title V sources, as described in Section 3.6 of the City of Huntsville's rules, will be used to support the title V program.

The ADEM and JCDH have also collected early title V fees in 1992, 1993 and 1994, to develop and start the title V program. Facilities under the ADEM and JCDH that paid these initial ramp-up fees will be given credit on the amount owed during 1995–1999 until the total credit allowed equals the sum of the amount paid in 1992, 1993, and 1994. The ADEM and JCDH have demonstrated that the fees collected during 1995–1999 minus the ramp-up fee credits are sufficient to cover the costs of the program. The City of Huntsville has also demonstrated that the fees collected will be sufficient to cover the cost of the program.

The ADEM, JCDH, and City of Huntsville submittals have included an initial accounting and description of how required fee revenues are used solely to cover the title V program. The EPA has determined that their fee demonstrations are adequate and meet the requirements of 40 CFR 70.9.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation

The ADEM, JCDH, and City of Huntsville have demonstrated in their title V program submittals broad legal authority to incorporate into permits and enforce all applicable requirements; however, they have also indicated that additional regulatory authority may be necessary to carry out specific section 112 activities. They have therefore supplemented their broad legal authority with a commitment to implement any section 112 regulations promulgated by EPA that are Federally mandated by the Clean Air Act Amendments of 1990. The EPA has determined that this commitment, in conjunction with the State/Local broad statutory authority, adequately assures compliance with all section 112 requirements. The EPA regards this commitment as an acknowledgment by the ADEM, JCDH, and City of Huntsville of their obligation to obtain further regulatory authority as needed to issue permits that assure compliance with section 112 applicable requirements. This commitment does not substitute for compliance with part 70 requirements that must be met at the time of program approval.

The EPA interprets the above legal authority and commitment to mean that the ADEM, JCDH, and City of Huntsville are able to carry out all section 112 activities. For further rationale on this interpretation, please refer to the Technical Support Documents accompanying this proposed interim approval.

b. Implementation of Section 112(g) Upon Program Approval

The EPA issued an interpretive notice (60 FR 8333) on February 14, 1995, which outlines a revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a Federal rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether or not to delay the effective date of section 112(g) beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless EPA provides for such an additional postponement of section 112(g), the ADEM, JCDH, and City of Huntsville must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of State regulations implementing the rule.

The EPA is aware that the ADEM, JCDH, and City of Huntsville lack a program designed specifically to implement section 112(g). However, the ADEM, JCDH, and City of Huntsville do have preconstruction review programs within their permit rules that can serve as adequate implementation vehicles during the transition period. These programs would allow the ADEM, JCDH, and City of Huntsville to select control measures that would meet the maximum available control technology (MACT) standards, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit. The EPA proposes to approve the use of the ADEM, JCDH, and City of Huntsville preconstruction review programs, under the authority of title V and part 70, for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of State/

Local rules implementing EPA's section 112(g) regulations. These programs are found in Chapter 335–3–14 of the ADEM Regulations, Chapter 2 of the JCDH Regulations, and Chapter 3.5 of the City of Huntsville Regulations. Although section 112(l) provides authority for approval of State air regulations that specifically implement section 112(g), the direct linkage between the implementation of section 112(g) and title V provide for this limited approval by way of the preconstruction review programs already in place.

The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the State to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 General Provisions Subpart A and standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) and part 70 require that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of future section 112 standards and programs that are unchanged from the Federal standards as promulgated, and to delegate existing standards under 40 CFR parts 61 and 63 for part 70 and non-part 70 sources.[1] The ADEM, JCDH, and City of Huntsville have informed EPA that they intend to accept delegation of section 112 standards and infrastructure programs through adoption by reference. The details regarding the use of these delegation mechanisms are set forth in a letter dated June 8, 1995, submitted by the ADEM as a title V program addendum.

d. Commitment To Implement Title IV of the Act

The ADEM has committed to implement any Acid Rain regulations, following promulgation by EPA of regulations implementing sections 407 and 410 of the Clean Air Act, that are Federally mandated by the Clean Air Act Amendments of 1990 through title IV. The ADEM has proposed revisions to the ADEM Administrative Code that will incorporate 40 CFR Part 72 and Appendices by reference. The State has committed to finalize its Acid Rain rules by November 15, 1995. The JCDH and City of Huntsville have committed to adopt Local Acid Rain regulations within 60 days after the ADEM adopts the State rules.

B. Proposed Actions

The EPA is proposing to grant source category-limited interim approval for the ADEM and JCDH operating permits programs, and interim approval for the City of Huntsville program. If promulgated, the State and Local agencies must make the following changes to their programs to receive full approval:

1. The State statute must be revised to provide adequate criminal authority as required by 40 CFR 70.11(a)(3)(ii)–(iii), including criminal fines recoverable in a maximum amount of not less than $10,000 per day per violation.

2. The ADEM, JCDH, and City of Huntsville must delete ADEM Regulation 335–3–16–.04(9)(b), JCDH Regulation 18.4.9(b) and City of Huntsville Regulation 3.9.4(b), which state: ''Certification for completeness shall not be required for initial applications that will not be processed in the first year the regulations in this chapter are effective.'' Since applications will be received from all sources by the end of the first year following program approval, and these applications will meet at least minimal requirements for a completeness determination, this regulation is not consistent with 40 CFR Part 70.

3. The ADEM, JCDH, and City of Huntsville must revise their regulations regarding insignificant activities such that (1) emissions thresholds for individual activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1,000 pounds per year or section 112(g) de minimis levels for HAPs, (2) their list of insignificant activities is made available for EPA and public review and comment each time the list is revised, and (3) emissions units with applicable requirements will not be exempted from title V permitting requirements or major source applicability determinations, even if listed on an approved list of insignificant activities.

4. The ADEM, JCDH, and City of Huntsville programs must be revised to provide for operational flexibility in accordance with 40 CFR 70.4(b)(12)(iii), 70.5(c)(7), and 70.6(a)(10). These rules allow the agencies, if requested by permit applicants, to issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in permitted facilities.

5. ADEM Regulation 335–3–16–.04(8)(b)(3), JCDH Regulation 18.4.8(c)(3), and City of Huntsville Regulation 3.9.3(c)(3) state that permit applications shall include ''emission rates of all pollutants in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, or alternative method approved by the Department's Director.'' The Regulations must be revised to delete the Department Director's discretion in approving alternatives to standard reference test methods used in demonstrating compliance with title V permit terms.

6. The ADEM, JCDH, and City of Huntsville rules define significant modifications as modifications under NSPS or NESHAP. In accordance with 40 CFR 70.7(e)(4)(i), this definition must be modified to include at least every significant change in existing monitoring terms or conditions and every relaxation of reporting or recordkeeping terms or conditions as a significant modification.

7. For full approval, ADEM Regulation 335–3–16–.13(1)(a)7 (JCDH Regulation 18.13.1(a)(7) and City of Huntsville Regulation 3.9.11(a)(1)(vii)) must be revised to specifically list the types of changes that the State proposes to be eligible for processing as administrative amendments, thus obtaining the Administrator's approval of such changes as part of the State's part 70 program. Also, ADEM Regulation 335–3–16–.13(1)(a)6 must be revised to include the EPA and affected states review provisions required by 40 CFR 70.7(d)(1)(v).

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim

[1] The radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the ADEM, JCDH, and City of Huntsville in the development of their radionuclide program to ensure that permits are issued in a timely manner.

approval period, the State is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications. The ADEM and JCDH, which have requested source category-limited interim approvals as discussed below, will have a 5-year time period in which to process initial permit applications.

The ADEM and JCDH have requested source category-limited (SCL) interim approval of their part 70 operating permits programs. Although the ADEM and JCDH would be required to issue permits within three years to all sources subject to the interim approval, some sources would not be subject to the requirement to obtain a permit until full approval is granted. Part 70 sources not addressed until full program approval is granted are also subject to a 3-year time period for processing initial permit applications. The 3-year period for these sources would begin on the date that full approval of the State or Local program is granted. Therefore, initial permitting of all part 70 sources would not be completed until five years after interim approval is granted. The City of Huntsville did not request SCL interim approval of their part 70 operating permits program, and will therefore complete initial permitting within three years of interim approval.

The ADEM and JCDH provided the reasons for needing SCL interim approval in supplemental materials submitted by the ADEM on March 18, 1994, and by the JCDH on July 10, 1995. The ADEM and JCDH have a variety of large and complex sources such as chemical manufacturing plants and pulp and paper facilities. As a result, EPA believes the ADEM and JCDH will be unable to issue permits to all part 70 sources within three years and that SCL interim approval is warranted for their title V programs. For further discussion on EPA's determination, see the Technical Support Documents accompanying this approval.

In published guidance, EPA has acknowledged that SCL interim programs that apply to at least 60 percent of all part 70 sources and that include sources responsible for at least 80 percent of the aggregate emissions from all part 70 sources substantially meet the emissions coverage requirements of part 70. The ADEM program submittal includes a schedule for permitting 60 percent of all part 70 sources within three years of interim program approval. The ADEM has also committed to permitting part 70 sources that are responsible for a substantial percentage of the State's aggregate emissions in three years. In addition, the ADEM has committed to act on all initial permit applications by November 15, 2000. The EPA believes that the ADEM program has been skillfully designed to utilize available resources in an efficient manner and to result in effective permits that are Federally enforceable. The EPA is confident that the ADEM will address a substantial number of sources in the first three years so as to represent a significant portion of the program and, therefore, fully meets the intent of part 70 and other program guidance. The JCDH program will address 60 percent of their part 70 sources during the first three years following SCL interim approval and has also committed to permitting part 70 sources that are responsible for a substantial percentage of the Local's aggregate emissions during these three years.

The scope of the ADEM, JCDH, and City of Huntsville part 70 programs for which EPA proposes interim approval in this notice would apply to all part 70 sources (as defined in the approved program) within the State, except any sources of air pollution over which an Indian tribe has jurisdiction. See, e.g., 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

As discussed above in section II.A.4.c., EPA also proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to the ADEM, JCDH, and City of Huntsville for receiving delegation of future section 112 standards and programs that are unchanged from Federal standards as promulgated. In addition, EPA proposes to delegate existing standards and programs under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the submittals and other information relied upon for the proposed interim approval are contained in a docket maintained at EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by October 13, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, Local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the [proposed] approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, Local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or Local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, Local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 5, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–22723 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[WI56–01–7019b; FRL–5289–4]

Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: In this action USEPA proposes to remove all total suspended particulate (TSP) area designations in the State of Wisconsin. This action was prompted by the Wisconsin Department of Natural Resources' (WDNR) request to redesignate all areas in the State from TSP nonattainment to attainment. In the final rules section of this **Federal Register**, USEPA is approving the State's request as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by October 13, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S.C. 7401–7671(q).

Dated: August 17, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–22621 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 4E4419/P626; FRL–4970–8]

RIN 2070–AC

Avermectin B_1 and its Delta-8,9 Isomer

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish time-limited tolerances for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on the raw agricultural commodities dried hops and cattle fat. The proposed regulation to establish maximum permissible levels for residues of the insecticide was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4). The time-limited tolerances for dried hops and cattle fat would expire on April 30, 1996.

DATES: Comments, identified by the document control number [PP 4E4419/P626], must be received on or before October 13, 1995.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Comments and data may also be submitted to OPP by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PP 4E4419/P626]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in the ''SUPPLEMENTAL INFORMATION'' section of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 4E4419 to EPA on behalf of the Idaho, Oregon, and Washington Hop Commissions, and the Hop Growers of America. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), amend 40 CFR 180.449 by establishing time-limited tolerances for the combined residues of the insecticide avermectin B_1 [a mixture of avermectins containing greater than or equal to 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a} and less than or equal to 20 percent avermectin B_{1b} (5-O-demethyl-25-de(1-methylpropyl)-25-(1-

methylethyl) avermectin A_{1a})] and its delta-8,9-isomer in or on the raw agricultural commodities dried hops at 0.5 part per million (ppm) and cattle fat at 0.015 ppm.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances include:

1. A 1-year feeding study with dogs fed diets containing 0.25, 0.50, or 1.0 milligram (mg)/kilogram (kg)/day with a no-observed-effect level (NOEL) of 0.25 mg/kg/day. A high incidence of mydriasis (excessive dilation of the pupil of the eye) was observed in male and female dogs at the 0.50-mg/kg/day dose level.

2. A 2-year chronic toxicity/carcinogenicity study with rats fed diets containing 0, 0.75, 1.5, or 2.0 mg/kg/day with a systemic NOEL of 1.5 mg/kg/day. Tremors were observed in male and female rats fed diets containing 2.0 mg/kg/day. No carcinogenic effects were observed under the conditions of the study.

3. A chronic toxicity/carcinogenicity study in mice fed diets containing 0, 2.0, 4.0, or 8.0 mg/kg/day for 94 weeks with a systemic NOEL of 4 mg/kg/day based on increased mortality, dermatitis, and extramedullary hematopoiesis in the spleen of males, and body weight loss in females at the 8.0 mg/kg/day dose level.

4. A two-generation reproduction study in rats fed diets containing 0, 0.06, 0.12, or 0.40 mg/kg/day with a NOEL of 0.12 mg/kg/day. The lowest-observed-effect level (LOEL) was established at 0.40 mg/kg/day based on increased retinal folds in weanlings, increased dead pups at birth, decreased viability indices, decreased lactation indices, and decreased pup body weights.

5. A developmental toxicity study with rats given gavage doses of 0, 0.4, 0.8, or 1.6 mg/kg/day with no developmental toxicity observed under the conditions of the study.

6. A developmental toxicity study with mice given gavage doses at 0, 0.1, 0.2, 0.4, or 0.8 mg/kg/day. The LOEL for developmental toxicity (cleft palate) was established at 0.4 mg/kg/day.

7. A developmental toxicity study with rabbits given gavage doses with NOEL's for developmental and maternal toxicity at 1.0 mg/kg/day. The LOEL for developmental toxicity was established at 2.0 mg/kg/day based on cleft palate, clubbed foot, and delayed ossification.

8. Avermectin B_1 tested negative for mutagenic effects in the Ames assay, V-79 mammalian cell assay, structural chromosomal aberration assay (*in vitro* in Chinese hamster ovary cells), and *in vivo* bone marrow cytogenic study in male mice. Avermectin B_1 produced an increase in single strand DNA breaks in a rat *in vitro* hepatocyte mutagenicity study. However, no mutagenic effects were observed when the assay was carried out in vivo at 10.6 mg/kg.

Toxicity studies reviewed for the delta-8,9-isomer of avermectin B_1 include:

9. A developmental toxicity study in rats given gavage doses of 0, 0.25, 0.50, and 1.0 mg/kg/day with no developmental toxicity observed under the conditions of the study.

10. A mouse developmental toxicity study with a NOEL of 0.06 mg/kg/day based on developmental toxicity (cleft palate) at the 0.10 mg/kg/day dose level.

11. A one-generation reproduction study with rats fed diets containing 0, 0.06, 0.12, or 0.40 mg/kg/day with a NOEL for reproductive effects at 0.40 mg/kg/day. There were no reproductive effects observed under the conditions of the study.

12. An Ames mutagencity study was negative in the presence of S-9 activation.

Dietary risk assessements for avermectin indicate that there is minimal risk from established tolerances and the proposed tolerances for dried hops and cattle fat. Dietary risk assessments were conducted using the Reference Dose (RfD) to assess chronic exposure and risk and the Margin of Exposure (MOE) for acute toxicity.

The RfD is calculated at 0.0004 mg/kg/day, based on a NOEL of 0.12 mg/kg/ of body weight/day from the two-generation reproduction study in the rat and an uncertainty factor of 300. The anticipated residue contribution (ARC) from existing tolerances and the proposed tolerances for dried hops and cattle fat utilizes 6 percent of the RfD for the general population and 21 percent of the RfD for nonnursing infants (less than 1-year old).

The MOE is a measure of how closely the high-end acute dietary exposure comes to the NOEL from the toxicity endpoint of concern. For avermectin the MOE was calculated as a ratio of the NOEL (0.06 mg/kg/day) from the mouse developmental toxicity study to dietary exposure, as estimated for the population subgroup at greatest risk (females of child-bearing age). The MOE for females of childbearing age is greater than 100 for high-end exposure. Acute dietary MOE's of of less than 100 are generally of concern to EPA.

The nature of the residue in or on hops is adequately understood. The enforcement method, which was developed by the registrant, Merck Research Laboratories, has been validated by an independent laboratory. The enforcement method will be submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Volume II (PAM II), when EPA's Analytical Chemistry Laboratory has successfully completed its own validation of the enforcement method. The analytical method is being made available, in the interim, to anyone with an interest in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protections Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-305-5937.

Any secondary residues will be covered by existing tolerances for meat, meat byproducts, and milk and the proposed tolerance for cattle fat at 0.015 ppm. The established tolerances for meat, meat byproducts, and milk will expire on April 30, 1996, which coincides with conditional registrations for use of avermectin on cotton and citrus. (See the **Federal Registers** of August 3, 1994 (59 FR 39505) and September 30, 1994 (59 FR 49825), for additional information regarding the conditional registrations for cotton and citrus.) The proposed tolerance for cattle fat will expire on April 30, 1996, which also coincides with the expiration date for time-limited tolerances for meat, meat byproducts, and milk. EPA intends to make a decision on the registrations for cotton and citrus prior to April 30, 1996. If full registration is issued, the time-limited restrictions will be removed from the avermectin tolerances for meat, meat byproducts, cattle fat, and milk.

EPA is establishing the tolerance for dried hops with an expiration date of April 30, 1996, to allow IR-4 time to submit additional residue data in support of a permanent tolerance for dried hops, and to allow EPA additional time to evaluate the enforcement method for dried hops. A permanent tolerance for dried hops must also await establishment of permanent tolerances for meat, meat byproducts, cattle fat, and milk.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is

proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E4359/P626]. Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

A record has been established for this rulemaking under docket number [PP 4E4419/P626] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not ''significant'' and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 30, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.449, by amending paragraph (a) in the table therein by adding and alphabetically inserting listings for cattle fat and dried hops and by amending paragraph (b) by revising the introductory text, to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration date
Cattle, fat	0.015	Do.
* * * * *		
Hops, dried	0.5	Do.
* * * * *		

(b) A tolerance is established for the combined residues of the insecticide avermectin B1 [a mixture of avermectins containing greater than or equal to 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and greater than or equal to 20 percent avermectin B_{1b} (5-O-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_{1a})] and its delta-8,9-isomer in or on the following commodities:

* * * * *

[FR Doc. 95–22619 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50601F; FRL–4926–1]

Cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo-; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo- based on receipt of new data. The data indicate that for purposes of TSCA section 5, the substance will not present an unreasonable risk to human health.

DATES: Written comments must be received by October 13, 1995.

ADDRESSES: All comments must be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, an additional sanitized copy must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50601F. Unit III.

of this preamble contains additional information on submitting comments containing CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–50601F. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1992 (57 FR 44050), EPA issued a SNUR establishing significant new uses for cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo-. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo- under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

PMN Number: P–90–1358

Chemical name: Cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo-.
CAS number: 7027–11–4.
Effective date of revocation of section 5(e) consent order: October 17, 1994.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA has sufficient information to determine, for purposes of TSCA section 5, that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance will not present an unreasonable risk to human health. Accordingly, EPA has determined that further regulation under section 5(e) is not warranted at this time.
Toxicity testing results: The results of the 90–day subchronic study in rats which included a functional observational battery, an evaluation of motor activity, and specific histological examination of the central and autonomic nervous system, show that the PMN substance P–90–1358 did not produce signs of systemic toxicity in either sex of rats when administered in feed. At the 4,500 ppm (parts per million) dose, which was the highest dose tested, food consumption and weight gain in females were depressed. However, it is uncertain whether the depression of body weight in females was due to toxicity or unpalatability of the test material. There were no signs of neurotoxicity at any dose tested. Upon microscopic examination, there was no dose-related trend in incidence of abnormal findings. There was no indication whether cyanide was or was not released from the PMN substance. In addition, the study showed that the PMN substance does not act like the analogue, isophorone.
CFR citation: 40 CFR 721.2225

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to the human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. EPA reviewed testing conducted by the PMN submitter pursuant to the consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as ''confidential,'' ''trade secret,'' or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50601 (P–90–1358). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

A record has been established for this rulemaking under docket number OPPTS–50601F (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept

in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 1, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2225 [Removed]

2. By removing § 721.2225.

[FR Doc. 95–22730 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50608C; FRL–4911–5]

Ethane, 1,1,1-Trifluoro-; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for ethane, 1,1,1-trifluoro-, based on receipt of new data. The data indicate that for purposes of TSCA section 5, the substance will not present an unreasonable risk to human health.

DATES: Written comments must be received by October 13, 1995.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460.

Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50608C. Unit III. of this preamble contains additional information on submitting comments containing CBI.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–50608C. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit IV. of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 8, 1993 (58 FR 32238), EPA issued a SNUR establishing significant new uses for ethane, 1,1,1-trifluoro-. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for ethane, 1,1,1-trifluoro- under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

PMN Number P–92–341

Chemical name: Ethane, 1,1,1-*trifluoro-*.
CAS number: 420–46–2.
Effective date of revocation of section 5(e) consent order: August 29, 1994.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted by the PMN submitter under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA has sufficient information to determine, for purposes of TSCA section 5, that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance will not present an unreasonable risk to human health. Accordingly, EPA has determined that further regulation under section 5(e) of TSCA is not warranted at this time.
Toxicity testing results: Cardiac sensitization (dogs): The PMN substance was found to be a cardiac sensitizer when exposures occurred at a 30 percent concentration in air (300,000 ppm (parts per million)) for 10 minutes. Lower exposures did not elicit a sensitization response. The substance is not mutagenic in the micronucleus assay. There were no observed adverse effects at concentrations up to 40,000 ppm in the developmental or 90–day subchronic study.
CFR citation: 40 CFR 721.3254.

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the

consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any person's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as ''confidential,'' ''trade secret,'' or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50608 (P–92–341). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

A record has been established for this rulemaking under docket number OPPTS–50608C (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: September 1, 1995.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.3254 [Removed]

2. By removing § 721.3254.

[FR Doc. 95–22731 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ–225–P]

RIN 0938–AG99

Public Health Service; CLIA Program; Categorization of Waived Tests

AGENCY: Health Care Financing Administration (HCFA) and Public Health Service (PHS), HHS.

ACTION: Proposed rule.

SUMMARY: In this rule we are proposing criteria we would use to determine whether to categorize specific laboratory tests as waived from certain requirements of the Clinical Laboratories Improvement Amendments of 1988. We also propose revisions to requirements that laboratories performing waived tests must meet.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 13, 1995.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Centers for Disease Control and Prevention, Public Health Service, Department of Health and Human Services, Attention: HSQ–225–P, 4770 Buford Hwy., NE., MS F11, Atlanta, Georgia 30341–3724.

If you prefer, you may deliver your written comments (1 original and 3 copies) to the following address:

CDC/Washington, Room 714–B, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ–225–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC

20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rosemary Bakes-Martin, (404) 488–7655, for questions regarding the criteria for waived test categorization and the requirements for data submission; and Judy Yost, (410) 786–3531, for certificate and inspection issues.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 353 of the Public Health Service (PHS) Act (42 U.S.C. 263a), as amended by the Clinical Laboratory Improvement Amendments of 1988 (CLIA), all laboratories that examine human specimens for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings must meet certain requirements to perform the examination. On February 28, 1992 (57 FR 7002), we published regulations to implement CLIA at 42 CFR part 493. Many of the requirements are based on the complexity of the tests performed. There are currently three test categories: waived, moderate complexity and high complexity.

In accordance with the law, HHS established a Clinical Laboratory Improvement Advisory Committee (CLIAC) to advise and make recommendations on technical and scientific aspects of the regulations. The CLIAC is composed of individuals involved in the provision of laboratory services, use of laboratory services, development of laboratory testing devices or methodologies, and others as approved by HHS. In addition, HHS has designated four CLIAC subcommittees that focus on the following areas: cytology; personnel; proficiency testing, quality control and quality assurance; and test categorization.

We received approximately 16,000 letters from professional organizations and individuals that provided approximately 71,000 comments in response to publication of the February 28, 1992 regulations. Through this proposed rule, we are responding to the approximately 1,100 comments concerning the categorization of waived tests, specifically the subjectiveness of the waived criteria and the failure of tests to be granted waiver status.

These commenters were responding to our regulations at § 493.15 that merely excerpt the statutory language without elaboration and list nine tests or examinations that meet the statutory criteria and are waived. That section further provides that revisions to the list of waived tests approved by HHS will be published in the **Federal Register** in a notice with opportunity for public comment. As currently defined in the regulation, waived tests are simple laboratory examinations and procedures that—

(1) Are cleared by the Food and Drug Administration (FDA) for home use;

(2) Employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible; or

(3) Pose no reasonable risk of harm to the patient if the test is performed incorrectly.

The specified tests that are listed in the regulation are:

(1) Dipstick or tablet reagent urinalysis (non-automated) for bilirubin, glucose, hemoglobin, ketone, leukocytes, nitrite, pH, protein, specific gravity, and urobilinogen;

(2) Fecal occult blood;

(3) Ovulation tests—visual color comparison tests for human luteinizing hormone;

(4) Urine pregnancy tests—visual color comparison tests;

(5) Erythrocyte sedimentation rate—non-automated;

(6) Hemoglobin—copper sulfate—non-automated;

(7) Blood glucose by glucose monitoring devices cleared by the FDA specifically for home use;

(8) Spun microhematocrit; and

(9) Hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout.

After evaluating the comments concerning waived tests, we sought advice in February 1993 from the CLIAC concerning the criteria for waiver and the process for considering whether specific tests should be placed in the waived category. The CLIAC agreed that the criteria should be better defined and recommended that the Centers for Disease Control and Prevention (CDC) clarify the criteria and process for categorizing waived tests and suggested that a moratorium be placed on adding tests to the waived category until the criteria were better defined. In response to the CLIAC recommendation, CDC initially established a moratorium on considering tests for waiver while we were developing the notice of proposed rulemaking to revise the CLIA regulations for waived categorization.

In response to public concern, on December 19, 1994, the moratorium was lifted, and CDC notified all manufacturers and producers of moderate complexity test systems that it will consider for waiver any test that meets the statutory criteria and for which the manufacturer or producer applies for waiver in accordance with the CLIA regulations published February 28, 1992. CDC enclosed guidelines (included in this rule as proposed test system characteristics and field studies) that can be used to verify the accuracy and precision of testing devices and demonstrate that the test meets the statutory criteria for waiver. The guidelines were included to assist applicants in applying for waiver; however, all requests will be considered as long as they include valid scientific studies to verify that the test meets the statutory criteria for waiver.

II. The Revision Process

Under the statute, waived tests are defined as ''* * * simple laboratory examinations and procedures that, as determined by the Secretary, have an insignificant risk of an erroneous result * * *.'' The statute contains additional language to describe the types of examinations and procedures to be included in the waived category; that is, tests that have ''* * * been approved by the FDA for home use, employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, or the Secretary has determined pose no reasonable risk of harm to the patient if performed incorrectly.'' The law also specifies that waived tests are exempt from the CLIA health and safety standards, including personnel, patient test management, quality control, proficiency testing, quality assurance, and routine inspections requirements.

In the preamble of the CLIA regulations published February 28, 1992, in the **Federal Register** (57 FR 7002), we stated that FDA clearance of a test for home use could not be used as a sole criterion for qualifying as a

waived test. We have continued to review the section of the statute pertaining to waived tests and believe now that the better view of the statute is that the waived criteria set out at 42 U.S.C. 263a(d)(3)(A), (B), and (C) were intended by the Congress to represent the kinds of tests that are ''simple laboratory examinations and procedures which * * * have an insignificant risk of an erroneous result.'' Therefore, any test system cleared by the FDA for home use will, upon receipt of a request for waiver from the manufacturer, be waived under CLIA.

With regard to the other two criteria for waiver, we believe that a critical factor to be considered is the implicit statutory mandate that waived testing be easily performed and provide accurate results. Therefore, in order for a test to be categorized as waived, it must *both*: (1) Be simple; and (2) have an insignificant risk of an erroneous result. In this rule, we are proposing to clarify the statutory criteria by specifying performance characteristics and studies designed to demonstrate that any test system categorized as waived would be simple, easy to perform, and essentially error-free. We believe that conformance to these criteria would reduce the possibility of the test producing an erroneous result and, thus, assist in determining whether the test system could pose a reasonable risk of harm to a patient if performed incorrectly.

We are proposing that, to be exempt from CLIA and categorized as waived, in accordance with the law, all test systems either be cleared by the FDA for home use or meet the requirements in CLIA to ensure that the test procedure is simple and not prone to error.

In response to the CLIAC recommendation, CDC developed a protocol to follow when requesting that tests be placed in the waived category. The protocol describes basic specifications for verifying that the test system meets the performance characteristics defined by the criteria. CDC proposed that, upon request of HHS as specified in § 493.2001, the CLIAC would review applications for waiver, in accordance with the waived criteria, and make recommendations to HHS concerning waiver status.

The proposed clarifications to the criteria for waiver addressing simplicity and accuracy and the proposed process to follow when requesting waived categorization were presented to the CLIAC test categorization subcommittee and subsequently to the full committee. The CLIAC endorsed the clarifications as well as the process for requesting waived categorization and recommended that the CLIA regulations be revised to incorporate the changes.

The CLIAC further recommended that all tests currently on the waived list be subject to the new clarifications to the criteria to determine if they should remain in the waived category. The committee thought that the method previously used to place tests in the waived category was too subjective and was concerned that some of the tests may not be sufficiently error-free to justify their continued waived status.

III. Proposed revisions

Clarified Criteria

In this regulation, we propose to delete § 493.15, which contains the current criteria for waived tests and a process to announce revisions to the list. In its place, we would: Clarify the waived criteria (outlined below), incorporate the clarification into our regulations at a new § 493.7, and place the remaining provisions, appropriately revised to reflect the new procedures, at § 493.9.

Following the recommendation from the CLIAC that we clarify the criteria for waiver, a number of resources, such as FDA protocols for defining tests suitable for home use and the National Committee for Clinical Laboratory Standards protocols for method evaluations, were used as reference materials. Since one of the main concerns of commenters on our previous CLIA rulemaking centered around the subjectiveness and ambiguity of applying the statutory criteria to categorize the tests as waived, we used information from these sources to clarify what we mean by ''simple'' and ''not prone to error'' as a mechanism to define the statutory phrase ''have an insignificant risk of an erroneous result''. We believe that test systems must possess certain characteristics that would make them easier to use and they also must be able to demonstrate a level of accuracy and precision that would ensure the correct test result is generated regardless of the user's level of expertise.

Below we have listed test system properties that we believe illustrate simplicity and ease of use. The test system:

- Uses direct unprocessed specimens, requires no specimen manipulation before analysis or analyst intervention during analysis, and provides direct readout of results. Quantitative tests must be fully automated while qualitative tests are limited to simple reagent impregnated devices that produce only a positive or negative result;
- Contains fail-safe mechanisms rendering no results when the results are outside of the reportable range or when the test system malfunctions;
- Requires no invasive test system troubleshooting, or electronic or mechanical maintenance; and
- Contains instructions written at a comprehension level no higher than seventh grade. Instructions would have to include step-by-step system operation and maintenance procedures; reagent preparation and storage; and calibrator and control preparation, storage, frequency of assay, and action to be taken if control or calibrator results are out of range.

We would consider a test for waiver if the test system has these characteristics. However, we are interested in receiving comments on alternative test system characteristics or approaches to define the statutory criterion related to test system simplicity.

The test system characteristics that we are proposing are designed to limit the amount of operator intervention or interpretive skill required to perform the test. Limiting operator intervention should prevent analysts without previous laboratory training or experience from inadvertently disrupting the analytic process and thus introducing human error into the testing procedure. The requirement for a fail-safe mechanism would prevent untrained operators from unknowingly accepting or utilizing incorrect results. In view of the fact that no previous training or experience is required before performing waived tests, test systems in the waived category should not require invasive troubleshooting or electronic or mechanical maintenance since these processes rely on the use of interpretive skills to make judgement decisions. We also believe that an ''easy to use'' test system must have instructions that are written at a comprehension level that would provide reasonable assurance that all likely users, regardless of background, training, or experience, would be able to read and understand the step-by-step procedures required to correctly perform testing. We are suggesting that a seventh grade comprehension level is appropriate to define the waived criteria because waived tests will not be subject to any personnel requirements and because waived tests must be simple and capable of providing accurate test results when performed by non-professional testing personnel. Inasmuch as the considerations for waiver are similar to those for FDA clearance of home-use products, and FDA requires that package inserts for

home-use tests be written at the seventh grade comprehension level, we are proposing that waived test system instructions be written at the same comprehension level.

Submission Requirements

To define test systems that are simple, easy to use, and not error prone, we are proposing that field studies be conducted to scientifically assess the accuracy and precision of the test. In this regulation, we are proposing basic criteria for manufacturers and producers to use in configuring these field studies.

The studies are designed to ensure that the test system generates consistent results regardless of the environment in which the testing is performed.

Specifically, we are proposing that these studies:

- Evaluate among-operator imprecision;
- Evaluate within-site imprecision at a minimum of three sites; and
- Evaluate among-site imprecision.

We are proposing to place no restrictions on the number of study participants or sites except for specifying that the within-site studies should be performed at a minimum of three sites. We believe it is appropriate to provide this flexibility in study design, which allows applicants to determine the number of participants and sites that are adequate to produce measures of performance that are both statistically valid and defensible. Also, the appropriateness of the number of study participants and sites might vary depending upon the analyte or test method.

Additionally, in this rule, we are proposing that the studies prove the test system's clinical reliability by demonstrating accuracy at all relevant medical decision points. To verify the credibility of the data, we are proposing in this rule that the number of participants and sites and the sampling process be adequate to produce measures of performance that are both statistically valid and defensible (estimates must support valid confidence limits for all statistical parameters). We are proposing that the studies be performed at non-laboratory sites to ensure that all users, professionals as well as lay persons, can perform waived testing with the same competence. We are proposing that the study participants have no previous laboratory experience or training to ensure that individuals used for study purposes have education, training and experience that is at a level no higher than that of the lowest trained persons anticipated to perform the test. We welcome comments and suggestions on the types of studies proposed in this rule and comments on our proposals for data submission.

Because waived tests would not be subject to any quality control requirements and we would not routinely conduct inspections of laboratories performing only waived tests, we propose to require the laboratory to notify the producer or manufacturer of the test system of any performance that does not meet the specifications as outlined in the test system instructions and would require the producer or manufacturer to include in the test system instructions the address and phone number of the person to contact. If the manufacturer or producer of the test system does not resolve the problem, we would require the laboratory to notify PHS of the problem.

We also would require that test system instructions include a statement to inform the laboratory that if the laboratory modifies or alters the test system instructions in any way (for example, changes in specimen type or sample amount), the test no longer meets the requirements for waiver and is considered to be high complexity and, thus, must meet all the applicable CLIA requirements in 42 CFR part 493.

Review Process

To ensure that tests categorized as waived are simple, accurate and essentially error-free, we would require that waived tests meet the clarified criteria. Once the final rule responding to the comments received to this proposed rule is published, we plan to evaluate requests for waiver, in accordance with the data submittal requirements and process for requesting waived categorization that would be included under § 493.7, and to apply the new requirements to currently waived tests. However, it should be noted that when the CLIA regulations are revised to incorporate changes to the waiver process, we expect that the review process for waived categorization of devices having similar test methodologies could be simplified. For example, if a test system employs the same methodology as a device that has been granted waiver in accordance with the final regulations, submission of studies showing accuracy and precision equivalency between the applicant test system and the waived test should be sufficient. These studies must reflect data that are adequate to produce measures of performance that are statistically valid and defensible and estimates must support valid confidence limits for all parameters.

In this rule, we are proposing that, after waiver has been granted, any change or modification by the maunfacturer or producer to the test system that could affect the test accuracy or reliability (that is, procedural changes that would now require operator intervention during the analytic process or method changes that require performance studies to reevaluate test validity) be resubmitted for evaluation and review. Changes to a test system that would not affect test performance, such as those made to improve component appearance or durability, would not have to be resubmitted.

The Department's purpose in issuing this proposed rule is to clarify the criteria for determining which tests should be waived. In this regard, there may be alternative formulations that would result in more, or fewer, waived tests. In this proposed rule, we specifically request comments concerning:

- Which proposed criteria might be modified (and how), as well as comments in support of the provisions contained in this proposed rule;
- The impact on patient access to care if these criteria are finalized;
- The health implications of any recommended changes, including not only the possibility of erroneous test results but also likely effects on patient health if additional testing is discouraged or encouraged (for example, by providing such testing in a doctor's office); and
- The potential that these criteria may or may not have for driving new technology toward more safe and accurate testing.

In addition, we are interested in receiving comments and suggestions about how we might include in the waived categorization process considerations related to the benefits to the public of categorizing tests as waived. Although the statute does not specify this as a criterion for waiver, we recognize this as a significant factor affecting access to care.

After the comments to this rule are evaluated and a final rule is published, we plan to follow the CLIAC recommendation that PHS reevaluate tests that were previously categorized as waived against any new regulatory criteria. If changes to the previously waived tests are necessary, we plan to publish a notice in the **Federal Register** soliciting comments on the proposed changes.

Waived Test List

In this rule, we propose to delete the generic list of waived tests from

§ 493.15. However, at § 493.7(c)(3), we would retain the provision, currently at § 493.15(d), to publish the names of the tests that are waived in a **Federal Register** notice with an opportunity for public comment. In addition, for consistency with the test categorization provisions in § 493.17(c)(1)(ii), we would make waived categorization effective on the date of notification to the applicant. Any entity that is notified of approval of its waiver application must be aware, however, that we may rescind this waiver approval and recategorize the test should comments we receive convince us that our initial waiver decision was inappropriate.

Summary of Proposed Changes to the Regulation

We propose to remove § 493.15 in its entirety. The criteria currently in § 493.15(b) for determining whether a given test can be categorized as waived would now be in a new § 493.7 and in greater detail. The requirements applicable to certificate of waiver laboratories (formerly at § 493.15(e)) would be expanded and placed in a new § 493.9.

In § 493.9, we would continue to require laboratories to follow the manufacturer's or producer's instructions when performing waived tests and to meet the requirements in subpart B of part 493. In line with the clarifications provided to the statutory criteria for categorizing tests as waived, we also would state that if a laboratory does not follow the manufacturer's or producer's instructions or makes a modification in the test system, the laboratory would no longer meet the requirements for certificate of waiver and the modified test, as performed by the laboratory, would be considered high complexity until otherwise categorized. If a laboratory or manufacturer desires official categorization of the modified test, it must submit a written request to PHS. Categorization of the modified product should occur within 30 days after PHS receives the request. In addition, laboratories would be required to report to PHS any performance problems not resolved by the producer or manufacturer of the test.

We would also make technical conforming changes to the following sections and headings because of our revisions concerning waived tests: §§ 493.2; 493.20(c); 493.25(d); 493.35 (a) and (d); 493.37(b)(1) and (g); 493.39 introductory paragraph and paragraph (a); 493.45 (a)(2) and (a)(3); 493.47(a)(2); 493.49 introductory paragraph and (b)(2)(iv); 493.53(a); 493.1775(b)(4)(iii) through (v), and (c).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Collection of Information Requirements

The proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Section 493.7: This section outlines the criteria a manufacturer must follow in order to have a test considered to be a ''waived'' test. These include but are not limited to test system characteristics, instructions, field studies and the evaluation of data.

Section 493.9: This section outlines the requirements for laboratories performing waived tests. These include following the manufacturers' instructions and reporting to PHS performance problems not resolved by the manufacturer.

Sections 493.35, 493.39, 493.49, 493.53: Sections 493.35 through 493.63 are currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. The information is gathered on form number HCFA-R–26. These sections outline the requirements for a laboratory to follow to submit application forms for CLIA certification. The requirements include laboratory notification to HHS of changes to the types of tests performed or changes in ownership, name, location or director.

Section 493.1775: Section 493.1775 is currently approved under OMB approval number 0938–0612 with an expiration date of February 28, 1998. This section sets forth conditions and standards for inspection of laboratories. The burden associated with inspections consists of retrieving the records and documentation requested by the inspector, participating in the entrance and exit interviews, responding to the statement of deficiencies that may result from the inspection and documenting any corrective actions taken that are appropriate to the plan of correction for the deficiencies cited.

When OMB approves those provisions not currently approved we will publish a notice in the **Federal Register** to that affect.

Description of Respondents

Section 493.7: Small businesses or organizations, businesses or other for profit, non-profit institutions, who manufacture laboratory tests.

Sections 493.9, 493.35, 493.39, 493.49, 493.53; 493.1775: Small businesses or organizations, businesses or other for profit, non-profit institutions, state and local governments, federal agencies.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

CFR sections	Annual No. of responses	Annual frequency	Average burden per response	Annual burden per hours
493.35, 493.39, 493.49, 493.53	28,700	1	.25 hr	7,175
493.1775	1,280[a]	1	4 hrs	2,560
493.7	20	1	168 hrs	3,360
493.9	<20	[b]	[b]	[b]

[a] Based on receiving complaints on 2 percent of waived laboratories (64,000) resulting in the survey of 1,280 waived laboratories with complaints in a two year period.

[b] Laboratories are responsible for following manufacturers' instructions when performing waived tests. Whenever a problem is encountered by the laboratory that is not resolved by the manufacturer, the laboratory must notify PHS. This should be an infrequent occurrence (manufacturers generally resolve problems identified by laboratories).

The agency has submitted a copy of the proposed rule to OMB for its review of these information collections. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. Comments should be sent to HCFA, HSQB, MPAS, C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 and to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

VI. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories and manufacturers and producers of laboratory test systems are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As a result of our evaluation of comments received on the test categorization portion of the February 28, 1992 regulations implementing CLIA and as a result of additional consultation with the CLIAC, we are proposing to clarify the criteria and process used to categorize laboratory tests as waived. Manufacturers and producers of laboratory test systems specifically suggested that the types of information and data to be submitted when requesting waived categorization be more clearly defined in order to ensure that the criteria are applied accurately and uniformly to all laboratory tests. The proposed expansion of the waived criteria and development of a process protocol would provide for consistent application of detailed standards in order to ensure that tests categorized as waived are either cleared by the FDA for home use or are simple to use, produce accurate results when testing is performed, and preclude any reasonable risk of harm to patients as a result of testing errors. Of course, manufacturers and producers would be required to submit specific information and data demonstrating that their test system meets the criteria for waived categorization. In some cases, manufacturers or producers of test systems might have to conduct additional studies to obtain the information required; however, much of the data is similar to that currently required by the FDA for clearance of products. In accordance with the law, this rule would provide that any test system cleared by the FDA for home use will, upon application by the manufacturer, be waived from CLIA. We anticipate that manufacturers and producers ultimately will benefit in the form of increased sales and distribution of tests categorized as waived.

Currently, almost one-half of all laboratories hold certificates of waiver. These laboratories would obviously benefit from an improved test categorization process that yields more waived tests. Any increase in the number of waived tests would benefit laboratories by reducing the regulatory burden, since laboratories limiting their services to waived test performance are not subject to the CLIA health and safety standards (including proficiency testing, quality control, personnel, recordkeeping and quality assurance requirements). Certificate of waiver laboratories are required only to register and follow manufacturers' and producers' instructions for test performance. In addition, increasing the number of waived tests would enable laboratories to provide an expanded test menu without incurring the higher fees associated with a regular CLIA certificate. The availability of an expanded test menu at less cost also may encourage new entities to begin providing services, thereby increasing access to health care, particularly in underserved and rural areas. Consumers of laboratory services would benefit from an enhanced range of laboratory services that have been determined to be safe and produce accurate results.

We have developed these clarifications to the waived criteria in an effort to improve the process of approving tests for waiver. We believe that using the better defined criteria would result in more tests being waived if for no other reason than because the improved waiver process should drive the technology toward simpler tests that would then be widely available (because of waived status). However, we realize that the number of tests waived could vary depending upon the revisions to the waiver process. Depending on how many more or fewer tests receive a waiver, there could be significant effects on patient health (due to more or less patient access to testing, as well as more or fewer test errors) and impact on manufacturers, producers and laboratories. We request comments on alternatives that might produce higher benefits or lower costs, taking into account all effects. We particularly solicit comments that can provide quantitative estimates of likely effects on patient health resulting from different waived criteria and, hence, waived tests.

As indicated above, we believe that over time the effect of this rule will be to expand the universe of waived tests, to the benefit of patients, laboratories, manufacturers, and producers. However, we are unable to quantify these likely long run effects because they depend on market decisions, research results, and technological change that cannot be predicted.

In the short run, we would not expect substantial effects. Currently there are nine waived tests and about 250 individual test systems or products representing nine analytes or specific types of procedures that have been approved as waived tests. Assuming that the final rule does not depart substantially from the proposed criteria, the great majority of individual tests would continue to be eligible for the waiver category. We expect that laboratories would continue to have a wide range of products/test systems available and would therefore not lose waiver status. At most, only a few products might not meet the clarified waived criteria and any such test system's manufacturer or producer would have the option of improving test accuracy.

This proposed rule would clarify the process and criteria for categorizing waived tests and possibly result in changes in the list of waived tests. Proper realignment of the fee schedule, if necessary, would follow implementation of this rule.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities or

the operations of a substantial number of small rural hospitals. We do request comments, however, on possible adverse effects on affected entities and will consider these carefully in formulating the final rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 493

Grant programs-health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR part 493 would be amended as set forth below:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12), 1861(s)(13), 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11), 1395x(s)(12), 1395x(s)(13), 1395x(s)(14), 1395x(s)(15), and 1395x(s)(16)).

2. In § 493.2, in the definition of ''CLIA certificate'' the introductory text is republished and paragraph (2) and (5) are revised to read as follows:

§ 493.2 Definitions.

* * * * *

CLIA certificate means any of the following types of certificates issued by HCFA or its agent:

* * * * *

(2) *Certificate for provider-performed microscopy (PPM) procedures* means a certificate issued or reissued before the expiration date, pending an appeal, in accordance with § 493.47, to a laboratory in which a physician, midlevel practitioner or dentist performs no tests other than PPM procedures and, if desired, tests approved by PHS as waived under § 493.7.

* * * * *

(5) *Certificate of waiver* means a certificate issued or reissued before the expiration date, pending an appeal, in accordance with § 493.37, to a laboratory to perform only the tests approved by PHS as waived under § 493.7.

* * * * *

3. A new § 493.7 is added to read as follows:

§ 493.7 Waived tests.

(a) *Requirement.* For a test to be included in the waived category, the test system must meet the descriptive criteria specified in paragraph (b) of this section.

(b) *Criteria.* Test systems must be simple laboratory examinations and procedures that have an insignificant risk of an erroneous result. Test systems cleared by the FDA for home use meet the criteria specified in this section and will be approved for waiver following submission of the manufacturer's or producer's request for waiver approval.

(1) For quantitative tests, methods must be simple (easy to use) and accurate as evidenced by the following items:

(i) Test systems that have the following characteristics:

(A) Are fully automated or self-contained.

(B) Use only direct unprocessed specimens.

(C) Require no specimen manipulation before the analytic phase of operation.

(D) Require no operator intervention during the analytic phase.

(E) Provide a direct readout of results; that is, require no calculations or conversions.

(F) Contain fail-safe mechanisms that render no result when the test system malfunctions and initiate fail-safe mechanisms rendering no test result when the result is outside the reportable range.

(G) Require no invasive test system troubleshooting to be performed by testing personnel and include no electronic or mechanical maintenance to be performed by testing personnel.

(ii) Test system instructions that are written at a comprehension level no higher than the seventh grade (as demonstrated by accepted academic standards) and that address the following items:

(A) Analytical skills required of personnel performing the test.

(B) Attributes or limitations of the physical environment or conditions for test performance.

(C) Requirements for specimen collection, handling, storage and preservation.

(D) Reportable range for patient results.

(E) Reference range (normal values).

(F) Step-by-step protocols that include, as appropriate, the following items:

(*1*) Instrument or test system operation and test performance instructions.

(*2*) Test system maintenance procedures.

(*3*) Preparation and storage of reagents, calibrators, controls or other materials used in testing.

(*4*) Control procedures, including the type of materials, suggested concentrations, and frequency of assay.

(*5*) Calibration procedures, including the number and type of materials and frequency of assay.

(*6*) Acceptable ranges for any control or calibration material included with the test system.

(*7*) Action to be taken when calibration or control results do not meet the acceptable range of values.

(*8*) Description of course of action to be taken when the test system becomes inoperable.

(iii) Field studies that meet the following criteria:

(A) Are performed at nonlaboratory sites.

(B) Include study participants who have no previous laboratory experience or training. The number of participants and sites selected must be adequate to produce measures of performance that are both statistically valid and defensible.

(C) Demonstrate that the manufacturer's or producer's written instructions are the only protocols required to perform the test accurately and reliably.

(D) Demonstrate that the test system produces accurate results under the testing conditions and within the physical environment specifications defined in the test system instructions.

(E) For those tests that employ calibration, demonstrate that calibration is stable over the calibration frequency interval or that a fail-safe mechanism rendering no result is initiated when the test system is out of calibration.

(iv) Data from field studies that meet the following criteria:

(A) Are generated from protocols that address the points described in paragraph (b)(1)(iii) of this section.

(B) Are adequate to produce measures of performance that are both statistically valid and defensible (estimates must support valid confidence limits for all statistical parameters).

(C) Evaluate performance at all medical decision points and relevant upper and lower limits of the reportable range using at least three concentrations of the analyte being tested.

(D) Evaluate among-operator imprecision using test results of all study participants.

(E) Evaluate within-site imprecision using test results generated at each site by an adequate number of participants to produce measures of performance that are statistically valid and defensible. Testing must be performed at a minimum of three independent study sites.

(F) Evaluate among-site imprecision at an adequate number of sites to produce

measures of performance that are statistically valid and defensible.

(G) Demonstrate that the total amount of imprecision, which includes all components contributing to imprecision as demonstrated by studies described in paragraphs (b)(1)(iv) (D), (E) and (F) of this section, is less than one-fourth of the reference range for the analyte divided by the mean of the reference interval.

(v) Method accuracy studies demonstrating that the test system is not affected by systematic error when—

(A) Using reference materials assayed by study participants that produce data that prove there is no statistically significant difference between the test results and the value of the reference materials;

(B) Using patient samples instead of reference materials, proving that there is no statistically significant difference between test results obtained on patient and reference materials due to the effects of the sample matrix; and

(C) Using patient samples containing substances that commonly cause interference, confirming there is no introduction of error due to the presence of these substances.

(2) For qualitative tests, methods must be simple (easy to use) and accurate as evidenced by the following items:

(i) Test systems that have the following characteristics:

(A) Use only direct unprocessed specimens.

(B) Require no specimen manipulation before performing the testing procedure.

(C) Contain no procedural steps beyond adding a sample to a reagent impregnated device.

(D) Require no specimen manipulation during the procedure.

(E) Require a well-defined distinct endpoint that is limited to positive or negative interpretation.

(F) Contain fail-safe mechanisms that render no result when the test system malfunctions.

(ii) Test system instructions that are written at a comprehension level no higher than the seventh grade (as demonstrated by accepted academic standards) and that address the following items, as appropriate:

(A) Analytical skills required of personnel performing the test.

(B) Attributes or limitations of the physical environment or conditions for test performance:

(C) Requirements for specimen collection, handling, storage and preservation.

(D) Patient result reporting.

(E) Reference range (normal values).

(F) Step-by-step protocols that include, as appropriate, the following items:

(*1*) Test performance instructions.

(*2*) Preparation and storage of reagents, calibrators, controls or other materials used in testing.

(*3*) Control procedures, including the type of materials and frequency of assay.

(*4*) Calibration procedures, including the number and type of materials and frequency of assay.

(*5*) Acceptable ranges for any control or calibration material included with the test system.

(*6*) Action to be taken when calibration or control results do not meet the acceptable range of values.

(*7*) The correct interpretation of test endpoints.

(*8*) Description of course of action to be taken when test endpoints cannot be determined.

(iii) Field studies that meet the following requirements:

(A) Are performed at nonlaboratory sites.

(B) Include study participants who have no previous laboratory experience or training. The number of participants and sites selected must be adequate to produce measures of performance that are both statistically valid and defensible.

(C) Demonstrate that the manufacturer's or producer's written instructions are the only protocols required to perform the test accurately and reliably.

(D) Demonstrate that the test system produces accurate results under the testing conditions and within the physical environment specifications defined in the test system instructions.

(E) For those tests that employ calibration, demonstrate that calibration is stable over the calibration frequency interval or that a fail-safe mechanism rendering no result is initiated when the test system is out of calibration.

(iv) Data from field studies that meet the following requirements:

(A) Are generated from protocols that address the points described in paragraph (b)(2)(iii) of this section.

(B) Are adequate to produce measures of performance that are both statistically valid and defensible.

(C) Confirm that study participants are able to read the test endpoint with the same precision as laboratory professionals.

(D) Confirm that the performance of study participants is essentially the same as laboratory professionals when testing samples at or near the cutoff and at sufficient distance above and below the cutoff to confirm precision at all analytical decision points.

(E) Demonstrate minimal among-operator imprecision using results of all study participants.

(F) Demonstrate minimal within-site imprecision using test results generated at each site by an adequate number of participants to produce measures of performance that are statistically valid and defensible. Testing must be performed at a minimum of three independent study sites.

(G) Using results generated by study participants, on aliquots of a single testing material, demonstrate minimal among-site imprecision at an adequate number of sites to produce measures of performance that are statistically valid and defensible.

(v) Method accuracy studies demonstrating that there is no statistically significant difference between observed values and expected values at the cutoff point when—

(A) The test values are compared to a quantitative result such as the value of a reference material or the presence or absence of a particular biologic component;

(B) Confirming that there are no significant equivocal test results on either side of the cutoff;

(C) Comparing results between study participants and laboratory professionals on samples with values at the cutoff;

(D) The test is performed on patient samples instead of reference materials, confirming there is no introduction of error due to sample matrix; and

(E) Samples contain substances that commonly cause interference, confirming there is no introduction of error due to these substances.

(c) *Waiver process*—(1) *Process for requesting waived status.* (i) Requests for waiver of tests must be submitted to PHS.

(ii) PHS reviews requests for waiver that meet the criteria specified in paragraph (b) of this section and the submission requirements under paragraph (c)(2) of this section.

(iii) The Clinical Laboratory Improvement Advisory Committee (CLIAC), as specified in subpart T of this part, conducts reviews upon request of HHS and makes recommendations to HHS concerning the waiver of tests.

(iv) Any change or modification to a test system by the manufacturer or producer that could affect the accuracy or reliability of the waived test must be resubmitted to PHS for evaluation and review. Until this review is completed and status is determined, the modified test is considered uncategorized and, in accordance with § 493.17(c)(4), is considered high complexity.

(v) A request for reconsideration of a test denied waived status is accepted for review if the request is based on information not previously submitted.

(2) *Submission requirements*—(i) Requests for waiver must meet the criteria described in paragraph (b) of this section. In the event that a request does not include complete information, the request is not reviewed and the manufacturer or producer of the test system is notified.

(ii) Data collection protocols and data submitted must be complete and data submitted must be statistically valid and meet the criteria described under paragraph (b) of this section.

(iii) Test system instructions must be complete and must include, as applicable, the items defined in paragraph (b)(1)(ii) of this section for quantitative tests and under paragraph (b)(2)(ii) of this section for qualitative tests. In addition, test system instructions must include the following statements:

(A) ''Any modification by the laboratory to the test system or the PHS-approved test system instructions will result in the test no longer meeting the requirements for waived categorization. A modified test is considered to be high complexity and is subject to all applicable CLIA requirements contained in 42 CFR part 493.''

(B) ''The laboratory must notify the manufacturer or producer of this test system of any performance, perceived or validated, that does not meet the performance specifications as outlined in the instructions.'' The name, address and phone number(s) of the manufacturer's or producer's contact person(s) must follow this statement.

(iv) Using the criteria specified in paragraph (b) of this section, each test categorized as waived before [date of publication of final rule] will be reevaluated by PHS.

(3) *Notification of decision*—(i) PHS determines whether a laboratory test meets the criteria listed under paragraph (b) of this section for a waived test.

(ii) PHS notifies the applicant of the waived categorization determination, whether denied or granted.

(iii) Waived categorization is effective as of the date of notification to the applicant.

(iv) PHS publishes additions and revisions periodically to the tests categorized as waived in the **Federal Register** in a notice with an opportunity for public comment. PHS reserves the right to reevaluate and recategorize a test based upon the comments it receives in response to the **Federal Register** notice.

4. A new § 493.9 is added to read as follows:

§ 493.9 Laboratories performing waived tests.

(a) A laboratory may qualify for a certificate of waiver under section 353 of the PHS Act if it restricts its test performance to one or more tests approved by PHS as waived under § 493.7.

(b) Laboratories issued a certificate of waiver must meet the following requirements:

(1) Follow the manufacturer's or producer's instructions for performing the test. If a laboratory does not follow the manufacturer's or producer's test system instructions, the laboratory no longer meets the requirements for a certificate of waiver and the modified test, as performed by the laboratory, is considered high complexity until otherwise categorized.

(2) Report to PHS any performance problems not resolved by the manufacturer or producer of the test.

(3) Meet the requirements in subpart B of this part.

§ 493.15 [Removed]

5. Section 493.15 is removed.

6. In § 493.20, paragraph (c) is revised to read as follows:

§ 492.20 Laboratories performing tests of moderate complexity.

* * * * *

(c) If the laboratory also performs waived tests, compliance with subparts H, J, K, M, and P of this part is not applicable to the waived tests. However, the laboratory must comply with the requirements in §§ 493.9(b) and 493.1775.

7. In § 493.25 paragraph (d) is revised to read as follows:

§ 493.25 Laboratories performing tests of high complexity.

* * * * *

(d) If the laboratory also performs waived tests, the requirements of subparts H, J, K, M, and P are not applicable to the waived tests. However, the laboratory must comply with the requirements in §§ 493.9(b) and 493.1775.

8. In § 493.35, paragraphs (a) and (d) are revised to read as follows:

§ 493.35 Application for a certificate of waiver.

(a) *Filing of application.* Except as specified in paragraph (b) of this section, a laboratory performing only one or more tests approved by PHS as waived under § 493.7 must file a separate application for each laboratory location.

* * * * *

(d) *Access requirements.* Laboratories that perform one or more tests approved by PHS as waived under § 493.7 and no other tests must meet the following conditions:

(1) Make records available and submit reports to HHS as HHS may reasonably require to determine compliance with this section and § 493.9(b).

(2) Agree to permit announced and unannounced inspections by HHS in accordance with subpart Q of this part under the following circumstances:

(i) When HHS has substantive reason to believe that the laboratory is being operated in a manner that constitutes an imminent and serious risk to human health.

(ii) To evaluate complaints from the public.

(iii) On a random basis to determine whether the laboratory is performing tests not approved by PHS as waived under § 493.7.

(iv) To collect information regarding the appropriateness of tests approved by PHS as waived under § 493.7.

* * * * *

9. In § 493.37, the introductory text of paragraph (b) is republished and paragraphs (b)(1) and (g) are revised to read as follows:

§ 493.37 Requirements for a certificate of waiver.

* * * * *

(b) Laboratories issued a certificate of waiver—(1) Are subject to the requirements of this subpart and § 493.9(b); and

* * * * *

(g) A laboratory with a certificate of waiver that wishes to perform examinations or tests not approved by PHS as waived under § 493.7 must meet the requirements set forth in subpart C or subpart D of this part, as applicable.

10. In § 493.39, the introductory text and paragraph (a) are revised to read as follows:

§ 493.39 Notification requirements for laboratories issued a certificate of waiver.

Laboratories performing one or more tests approved by PHS as waived under § 493.7 and no others must notify HHS or its designee—

(a) Before performing and reporting results for any test not approved by PHS as a waived under § 493.7 for which the laboratory does not have the appropriate certificate as required in subpart C or subpart D of this part, as applicable; and

* * * * *

11. In § 493.45, the introductory text of paragraph (a) is republished,

paragraph (a)(3) is removed, and paragraph (a)(2) is revised to read as follows:

§ 493.45 Requirements for a registration certificate.

* * * * *

(a) A registration certificate is required—

* * * * *

(2) For all laboratories that have been issued a certificate of waiver or certificate for PPM procedures that intend to perform tests of moderate or high complexity, or both, in addition to those tests approved by PHS as waived under § 493.7 or specified as PPM procedures.

* * * * *

12. In § 493.47, paragraph (a) is revised to read as follows:

§ 493.47 Requirements for a certificate for provider-performed microscopy (PPM) procedures.

(a) A certificate for PPM procedures is required—

(1) Initially for all laboratories performing test procedures specified as PPM procedures; and

(2) For all certificate of waiver laboratories that intend to perform only test procedures specified as PPM procedures in addition to those tests approved by PHS as waived under § 493.7.

* * * * *

13. In § 493.49, the introductory text of paragraphs (b) and (b)(2) are republished and the introductory text of the section and paragraph (b)(2)(iv) are revised to read as follows:

§ 493.49 Requirements for a certificate of compliance.

A certificate of compliance may include any combination of tests categorized as high complexity or moderate complexity or approved by PHS as waived under § 493.7. Moderate complexity tests may include those specified as PPM procedures.

* * * * *

(b) Laboratories issued a certificate of compliance—

* * * * *

(2) Must permit announced or unannounced inspections by HHS in accordance with subpart Q of this part—

* * * * *

(iv) To collect information regarding the appropriateness of tests approved by PHS as waived under § 493.7 or tests categorized as moderate complexity (including the subcategory) or high complexity.

* * * * *

14. In § 493.53, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 493.53 Notification requirements for laboratories issued a certificate for provider-performed microscopy (PPM) procedures.

Laboratories issued a certificate for PPM procedures must notify HHS or its designee—

(a) Before performing and reporting results for any test of moderate or high complexity, or both, in addition to tests specified as PPM procedures or any test or examination that is not approved by PHS as waived under § 493.7 for which it does not have a registration certificate as required in subpart C or subpart D, as applicable, of this part; and

* * * * *

15. In § 493.1775, the introductory text of paragraphs (b) and (b)(4) is republished and paragraph (b)(4)(iv) is redesignated as (b)(4)(v), a new (b)(4)(iv) is added, and paragraphs (b)(4)(iii) and (c) are revised to read as follows:

§ 493.1775 Condition: Inspection of laboratories issued a certificate of waiver.

* * * * *

(b) The laboratory may be required, as part of this inspection, to—

* * * * *

(4) Permit HHS or its designee upon request to review all information and data necessary to—

* * * * *

(iii) Determine whether the laboratory is performing tests not approved by PHS as waived under § 493.7;

(iv) Determine whether the laboratory is performing the test in accordance with the manufacturer's or producer's instructions; and

* * * * *

(c) The laboratory must provide upon reasonable request all information and data needed by HHS or its designee to make a determination of compliance with the requirements of part 493. Requirements for the purposes of this section are located in subparts A and B or subpart D, if applicable, of this part.

* * * * *

Authority: Sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: May 18, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 2, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–22378 Filed 9–12–95; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[WT Docket No. 95–132; FCC 95–352]

Designate Sault Ste. Marie, Michigan; San Francisco, California, and Morgan City, Louisiana as a Radio Protection Area for Mandatory Vessel Traffic Services (VTS)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has proposed rules to add Sault Ste. Marie, Michigan; San Francisco, California, and Morgan City, Louisiana to the United States Coast Guard (Coast Guard) designated radio protection areas for mandatory VTS and establish marine VHF Channel 12 as the VTS frequency for Sault Ste. Marie, Michigan; San Francisco, California; and Channel 11 as the VTS frequency for Morgan City, Louisiana. This action is in response to a request from the Coast Guard. The designation of Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana as a VTS areas will allow the Coast Guard to manage vessel traffic in a more efficient manner.

DATES: Comments must be submitted on or before October 23, 1995; Reply comments on or before November 7, 1995.

FOR FURTHER INFORMATION CONTACT: James Shaffer, (202) 418–0680, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* FCC 95–352, adopted August 9, 1995, and released August 30, 1995. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. The Coast Guard filed a petition (RM–8500, 8592, 8598), Public Notice No. 2023 and 2057, requesting that the Commission amend Part 80 of the Rules, 47 CFR Part 80, to add Sault Ste. Marie, Michigan; San Francisco, California; and Morgan City, Louisiana to the Coast

Guard designated radio protection areas for mandatory VTS and established marine VHF Channel 12 as the VTS frequency for Sault Ste. Marie, Michigan; San Francisco, California; and Channel 11 as the VTS frequency for Morgan City, Louisiana.

2. Under the Ports and Waterways Safety Act of 1972, as amended by the Port and Tanker Safety Act of 1978 and the Oil Pollution Act of 1990, the Coast Guard may construct, operate, maintain, improve or expand VTS systems in any port or place under the jurisdiction of the United States, including the navigable waters of the United States, or in any covered by an international agreement negotiated pursuant to 33 U.S.C. § 1230. The Ports and Waterways Safety Act requires certain designated vessels which operate in a VTS area to utilize and comply with the VTS. Marine accidents in recent years have underscored the need for improving safety on the nation's waterways. Moreover, Congress mandated VTS participation in section 4107 of the Oil Pollution Act, 33 U.S.C. § 1223(a)(2). The Coast Guard has amended its VTS regulations to make participation in all VTS systems mandatory. A VTS system instills order and predictability on a waterway by coordinating vessel movements through the collection, verification, organization, and dissemination of information.

3. Designating Sault Ste. Marie and Berwick Bay as VTS areas will allow the Coast Guard to manage vessel traffic in those areas more efficiently and will help protect the marine environment by preventing vessel collisions and groundings. We propose, therefore, to add Sault Ste. Marie and Berwick Bay to the Commission's list of designated radio protection area for VTS systems specified in Section 80.383. The radio protection area for Sault Ste. Marie will be defined as ''The rectangle between North latitudes 45 degrees and 47 degrees, and West longitudes 83 degrees and 85 degrees.'' The radio protection area for Berwick Bay will be defined as ''The rectangle between North latitudes 28 degrees 30 minutes and 30 degrees 30 minutes, and West longitudes 90 degrees 50 minutes and 92 degrees.'' This area is part of the New Orleans VTS which discontinued operations on July 30, 1988, due to budgetary constraints.

4. We propose to designate Channel 12 (156.600 MHz) as a second radio frequency for use within the San Francisco VTS radio protection area. The density of vessel traffic in the San Francisco Bay, which includes numerous recreational boats, ferries and commercial fishing boats, severely constrains the ability of large vessels to maneuver in the event of an emergency. The Coast Guard states that with mandatory participation, the current VTS channel, Channel 14 (156.700 MHz), will be inadequate to ensure safe and reliable communications in this busy and environmentally sensitive area. The addition of Channel 12 will permit increased navigational safety in the area by organizing traffic flow patterns, reduced meeting, crossing and overtaking situations between large vessels in tight spaces, and limited vessel speed. We propose to permit private coast stations currently authorized on Channel 12 within the proposed San Francisco VTS area to operate until the end of their current license term on a noninterference basis.[1] The staff will help affected licensees find suitable alternative channels. No fee will be charged for affected stations that apply for modification for an alternative channel before their next renewal.

5. We propose to amend Section 0.331 to authorize the Chief, Wireless Telecommunications Bureau to amend the maritime service rules at the request of the United States Coast Guard to designate radio protection areas for mandatory VTS and establish marine channels as VTS frequencies for these areas. This will allow the Commission to expedite these requests, which will increase safe vessel transit and protect U.S. waters and associated natural resources from environmental harm.

6. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The change proposed herein will have a beneficial effect on the marine community by allowing the Coast Guard to manage vessel traffic in the Prince William Sound area in a more efficient manner. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601–612 (1980).

[1] There currently are six licensed private coast stations within the proposed designated radio protected area that would be affected by this proposal.

List of Subjects in 47 CFR Part 80

Communications equipment, Marine safety.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22635 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No.9508830222–5222–01; I.D. 062795B]

RIN 0648–AH89

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawling Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); notice of receipt of petition for rulemaking; request for comments.

SUMMARY: NMFS announces that it is considering proposing regulations that would identify special sea turtle management areas in the southeastern Atlantic and Gulf of Mexico and impose additional conservation measures to protect sea turtles in these areas. This ANPR is in response to the need for such measures identified in NMFS' biological opinions on shrimp trawling, as well as NMFS' recent experience and additional information regarding the need to more effectively protect sea turtles from incidental capture and mortality in the shrimp trawl fishery. NMFS also received a petition for rulemaking from the Texas Shrimp Association (TSA) to revise the current sea turtle conservation requirements for the shrimp trawl fishery in the southeastern United States. The petition is based on a report: ''Sea Turtle and Shrimp Fishery Interactions—Is a New Management Strategy Needed?'' prepared by LGL Ecological Research Associates, Inc., for TSA (LGL Report). NMFS is soliciting public comment on the LGL Report and information on sea turtles and shrimp trawling and the need for identification of certain areas in the southeastern United States that require special management measures, and what those measures should be.

DATES: Written comments will be accepted through November 13, 1995.

ADDRESSES: Written comments on this ANPR and the LGL Report and requests for copies of the Shrimp Fishery Emergency Response Plan (ERP) and the LGL Report may be submitted to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Phil Williams, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the ESA. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

NMFS consults on shrimp fishing operations in the southeastern United States that may affect listed sea turtles, pursuant to section 7 of the ESA. These shrimp fishing operations are managed, in part, under the Gulf of Mexico Shrimp Fishery Management Plan and the South Atlantic Shrimp Fishery Management Plan, both implemented pursuant to the Magnuson Fisheries Management and Conservation Act (16 U.S.C. 1801 *et seq.*), and the sea turtle conservation regulations at 50 CFR part 227, subpart D, implemented under the ESA.

Unprecedented levels of sea turtle strandings in Texas, Louisiana, and Georgia associated with shrimp fishing during 1994 resulted in a reinitiation of consultation pursuant to 50 CFR 402.16 on shrimp fishing in the southeastern United States. The resulting Biological Opinion (Opinion), issued on November 14, 1994, concluded that continued long-term operation of the fishery under the current management regime is likely to jeopardize the continued existence of the Kemp's ridley and prevent the recovery of loggerheads, but it identified a reasonable and prudent alternative to allow the fishery to continue while avoiding jeopardy. One component of the alternative required the establishment of sea turtle special management areas and permanent rules to reduce the impacts of intensive nearshore shrimping and prevent repeated incidental capture of individual turtles in those areas. An additional component required the development of a Shrimp Fishery Emergency Response Plan (ERP) to identify the actions NMFS would take in response to sea turtle stranding events and to ensure compliance with sea turtle conservation regulations. NMFS approved the ERP on March 14, 1995, and circulated it widely on March 17, 1995. A notice of the ERP's availability was published on April 21, 1995 (60 FR 19885).

NMFS has implemented several temporary restrictions on shrimp trawling during the 1995 season in both the Gulf and the southeast Atlantic, based on the guidance provided in the ERP. Temporary conservation measures restricting the use of certain types of turtle excluder devices (TEDs) and other fishing gear and were first imposed in areas off Texas (60 FR 21741, May 3, 1995) and were modified based on comments from industry (60 FR 26691, May 18, 1995). The same restrictions, as modified, were then imposed in areas off Georgia (60 FR 32121, June 20, 1995). Based on further public comment, restrictions were modified and, through separate rulemaking, were again imposed on August 11, 1995 (60 FR 42809, August 17, 1995) in areas off Georgia and South Carolina. NMFS was prepared to impose similar restrictions in areas off Texas, but a court order eliminated the need for these restrictions; instead, NMFS implemented the restrictions identified in the court order on August 24, 1995 (60 FR 44780, August 29, 1995).

NMFS intended the ERP to be an interim plan to guide its actions and to ensure compliance with sea turtle conservation regulations when strandings approached or met the authorized incidental take levels. Indeed, the Opinion requires that NMFS identify areas requiring special sea turtle management consideration, due to high sea turtle abundance or important nesting or foraging habitats, propose permanent management measures to mitigate the impacts of intensive nearshore shrimping, and prevent repeated incidental capture of individual turtles. These proposed conservation measures could include prohibitions on nighttime shrimping, restrictions on the number and size of trawl nets, restriction on the size of trynets, authorization of only top-opening hard-grid TEDs, reducing the density of shrimp vessels, and temporary area closures. The Opinion requires that the areas be identified by November 14, 1995, and that NMFS propose certain management measures in these areas. NMFS is inviting public comment on what areas and what measures should be included in such a rulemaking.

NMFS received a request from TSA that the LGL Report be treated as a petition for issuance, amendment or repeal of a rule under the rulemaking petition provision of the Administrative Procedures Act, at 5 U.S.C. 553 (e).

NMFS is inviting public comment to assist in determining what, if any, conservation measures should be required of the shrimp trawl fishery to reduce unusual mortalities of sea turtles. NMFS considers the LGL Report as a proposal to revise the existing sea turtle conservation regulations. Through this ANPR, all interested parties are invited to submit comments and information (see **ADDRESSES**).

Copies of the ERP and LGL Report, are available (see **ADDRESSES**).

Dated: September 6, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 95–22645 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 60, No. 177

Wednesday, September 13, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the Fourth Quarter of 1995

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the fourth quarter of 1995.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the fourth calendar quarter of 1995.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning October 1, 1995, and ending December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Utilities Service, room 2230-s, 14th Street & Independence Avenue, SW. AgBox 1522, Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the fourth calendar quarter of 1995 for municipal rate electric loans. Pursuant to regulations originally published by the Rural Electrification Administration (REA) at 7 CFR 1714.5, the interest rates on advances from municipal rate loans are based on indexes published in the ''Bond Buyer'' for the four weeks prior to the first Friday of the last month before the beginning of the quarter.

The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 101 Stat. 3178), signed by President Clinton on October 13, 1994, provides for the establishment of RUS as successor to REA with respect to various programs, including the electric loan program established by the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq*.). On October 20, 1994, the Secretary of Agriculture issued Secretary's Memorandum 1010–1, establishing RUS and abolishing REA. Therefore, RUS is publishing this notice implementing a rule originally published by REA.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the fourth calendar quarter of 1995.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2016 or later	6.000
2015	6.000
2014	6.000
2013	5.875
2012	5.875
2011	5.750
2010	5.625
2009	5.625
2008	5.500
2007	5.375
2006	5.250
2005	5.000
2004	5.000
2003	4.875
2002	4.750
2001	4.625
2000	4.500
1999	4.375
1998	4.250
1997	4.000
1996	3.875

Dated: September 6, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–22632 Filed 9–12–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 950901225–5225–01]

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales and purchases for 1995 and inventories for 1994 and 1995. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Nancy A. Piesto or Edward Murphy on (301) 457–2779.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on wholesale trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1995 Annual Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above. This survey has been submitted to the Office of Management and Budget, in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was cleared under OMB Control No. 0607–0195. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: September 6, 1995.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 95–22719 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

[Docket 50–95]

Proposed Foreign-Trade Zone—Kodiak, Alaska, Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Kodiak Island Borough (an Alaskan municipal corporation), requesting authority to establish a general-purpose foreign-trade zone at sites on Kodiak Island. Designation of the Kodiak Airport as a Customs user fee airport is being requested under separate application to the U.S. Customs Service. The FTZ application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 31, 1995. The applicant is authorized to make the proposal under Alaska Statutes, Chapter 77, Section 10.

The proposed zone would consist of eleven sites (4,265 acres) within the City of Kodiak and the Kodiak Island Borough: *Site 1* (Kodiak Space Launch Complex—3,077 acres)—at Narrow Cape, 45 miles SW of the City of Kodiak; *Site 2* (Port of Kodiak/Pier II—4 acres)—City and Port of Kodiak, 403 Marine Way; *Site 3* (Port of Kodiak/Pier III/Sea-Land—4.5 acres)—727 Shelikof, Kodiak; *Site 4* (Port of Kodiak—St. Herman Harbor, Near Island—380 acres); *Site 5* (Fuller's Boatyard Industrial Center—4.3 acres) Marine Way, Kodiak; *Site 6* (International Seafoods of Alaska—5.5 acres)—Marine Way, Kodiak; *Site 7A (13 acres) & 7B (32 acres)*—(Natives of Kodiak, Inc.—45 acres)—2 miles SW of the City of Kodiak on West Rezanof Drive; *Site 8*—(Kodiak State Airport—611.55 acres)—1500 Anton Larsen Bay Road; *Site 9*—(Lash Terminal—Seaport Terminal Services—78.5 acres)—7205 West Rezanof Drive, Kodiak; *Site 10A (44.94 acres) & 10B (9.16 acres)*—(Koniag Regional Native Corp.—53 acres) 2 sites located at the following distances SW of the City of Kodiak on East Rezanof Drive at the head of Womens Bay (10A—Bruhn Point—7.5 miles; 10B—Frye Point—9 miles); and, *Site 11* (Old Harbor—1.5 acres) south portion of the former Old Harbor Airport on Three Saints Avenue.

The application contains evidence of the need for zone services in the Kodiak, Alaska, area. Site 1, the Kodiak Space Launch Complex, will serve as the primary site. It includes launch pads, rocket storage and assembly facilities, and a satellite payload assembly facility. In regard to usage of the proposed sites, in general, several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as oil spill response mobile vans, seafood, boats and logs. No manufacturing approvals are being sought at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on October 5, 1995, 9:00 a.m., Kodiak Island Borough Assembly Chambers, Borough Building, 710 Mill Bay Road, Kodiak, Alaska 99615–6340.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 13, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 14-day period (to November 22, 1995).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Kodiak Island Borough Mayor's Office, Borough Building, 710 Mill Bay Road, Kodiak, Alaska 99615–6340

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: September 6, 1995.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 95–22763 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 090695A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

DATES: The meeting will be held on October 2, 1995, from 1:00 p.m. until 5:00 p.m.; on October 3 and October 4, from 8:00 a.m. until 5:00 p.m. each day, and on October 5, from 8:00 a.m. until 12:00 noon.

ADDRESSES: This meeting will be held at the NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL; telephone: (305) 361–4284.

Council address: Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

The Reef Fish Stock Assessment Panel (Panel) will review a recent assessment of the status of the red snapper stock and develop the range of allowable biological catch (ABC) for the 1996 season. This panel of scientists will develop the ABC range from the assessment prepared by NMFS. The Panel also will consider information on the use of marine sanctuaries and restoration periods for red snapper and will draft the Panel report to the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patricia Bear at the Council (see **ADDRESSES**) by September 22, 1995.

Dated: September 7, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–22764 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bangladesh

September 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–

4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 5371, published on January 27, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 14, 1995, you are directed to amend the January 24, 1995 directive to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
347/348	1,807,507 dozen.
351/651	556,644 dozen.
638/639	1,053,730 dozen.
645/646	220,292 dozen.
847	456,880 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–22694 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

September 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17325, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 14, 1995, you are directed to amend the directive dated March 30, 1995 to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	724,490 kilograms.
219	6,484,406 square meters.
225	5,323,210 square meters.
313	13,749,037 square meters.
314	50,178,236 square meters.
331/631	1,609,343 dozen pairs.
334/335	203,688 dozen.
342/642	311,196 dozen.
347/348	1,708,475 dozen.
359–S/659–S [2]	1,296,246 kilograms.
360	1,153,654 numbers.
361	1,153,654 numbers.
443	91,182 numbers.
445/446	46,050 dozen.
447	17,246 dozen.
448	17,458 dozen.
604–A [3]	487,623 kilograms.
611	5,496,469 square meters.
618	2,883,343 square meters.
619/620	8,036,726 square meters.
625/626/627/628/629	21,094,443 square meters.
634/635	257,995 dozen.
641	1,840,587 dozen.
643	270,472 numbers.
644	353,779 numbers.
645/646	663,381 dozen.
847	351,774 dozen.

Category	Adjusted twelve-month limit [1]
Subgroup in Group II 400, 410, 414, 431, 432, 434, 435, 436, 438, 439, 440, 442, 444, 459, 464, 465, 469, as a group.	3,179,889 square meters equivalent.
In Group II subgroup 435	48,903 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.95–22695 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

September 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 is being increased for special shift, reducing the limit for Categories 638/639 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17333, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 14, 1995, you are directed to amend the directive dated March 30, 1995 to adjust the limits for the following categories, as provided for under the terms of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
338/339	416,148 dozen.
638/639	366,699 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1994.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22696 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

September 7, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 59 FR 65760, published on December 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1995.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or

manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on September 14, 1995, you are directed to amend further the directive dated December 16, 1994 to adjust the limits for the following categories, as provided under the terms of the bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [2], 359–V [3], 360–363, 369–D [4], 369–H [5], 369–L [6], 410, 433-436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [7], 659–H [8], 659–S [9], 666, 669–P [10], 670–L [11], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,398,242,981 square meters equivalent.
Sublevels in Group I	
218	11,253,459 square meters.
338/339	2,476,533 dozen of which not more than 1,879,960 dozen shall be in Categories 338–S/339–S [12].
359–C	570,540 kilograms.
369–L	3,130,465 kilograms.
Group II	
330, 332, 349, 353, 354, 359–O [13], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [14], as a group.	123,554,464 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V [15], 224–O [16], 225, 227, 229, 369–O [17], 400, 414, 464, 465, 469, 600, 603, 604–O [18], 606, 618–622, 624–629, 665, 669–O [19] and 670–O [20], as a group.	260,913,574 square meters equivalent.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	11,036,942 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[12] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[13] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[14] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[15] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[16] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[17] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S)

[18] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[19] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[20] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–22697 Filed 9–12–95; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Fall General Board of the USAF Scientific Advisory Board will meet on 19–20 October 1995 at Andrews AFB, MD from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is for the board to receive feedback on the studies of the past year, hear special topics, and provide a forum for organizing and focusing the Board for the upcoming year.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–22657 Filed 9–12–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office, Award Based on Acceptance of an Unsolicited Application, University of Illinois—Energy Resources Center

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, announces its intent to award a grant to the University of Illinois—Energy Resources Center. The University's unsolicited application was found to be meritorious by DOE based on the evaluation criteria set forth in 10 C.F.R. 600.14(d)(1), (2), (3), (4), and (e)(i) and (ii) and is being accepted as it represents a unique, innovative idea, method and approach which would not otherwise be eligible for financial assistance under any recent, current, or planned solicitation. The objective of the work to be supported by this grant is for the Energy Resources Center at the University of Illinois to develop and successfully execute the twenty-third consecutive energy-environmental conference entitled, ''Energy and Environmental Policy in a Period of Political Transition,'' to be held November 20–21, 1995 in Chicago, Illinois.

The project period for the grant is for a 6 month period, expected to begin September 30, 1995. DOE plans to provide funding in the amount of $15,000.00 for this project period.

FOR FURTHER INFORMATION CONTACT: Marlene E. Martinez, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439, (708) 252–2080.

Issued in Chicago, Illinois on September 5, 1995.

Timothy S. Crawford,

Argonne Group Manager.

[FR Doc. 95–22755 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

Chicago Operations Office; Award Based on Acceptance of an Unsolicited Application

AGENCY: Department of Energy.

ACTION: Notice of Financial Assistance Award in Response to an Unsolicited Financial Assistance Application.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.14(e), it plans to negotiate and award Grant Number DE-FG02–95CH10846 to the Equity Research Corp.

SUPPLEMENTARY INFORMATION: The anticipated objective of the award is to provide for the application of ''Best Available Science'' (BAS) to the reevaluation of assessment methods based on scientific knowledge rather than opinions or value judgements. This proposal provides for a unique approach to choose the best available scientific information in that it suggests a clear separation of science from societal goals to enhance the accuracy of estimating environmental risks in an attempt to limit costly adverse effects. These goals will provide scientifically based data for others to utilize in pursuing environmental issues in the education arena and provide the general public as well as the professional societies, knowledge of how risk factors were determined by making consensus reports more accessible. This proposal provides a public service by providing the public with the best and most accurate scientific information with respect to utilizing the Best Available Science. DOE's Office of Environmental Management believes that there is a high probability of achieving the objectives.

The public is greatly served if environmental decisions would be based on BAS. It is the belief of the grantee that objectively computed risks will be somewhat lower than those based upon societal objectives. The lower the risk, the smaller the costs for adverse effects caused within the human health and environmental areas. It is likely that if this approach is successful the cost of environmental protection would be significantly reduced. Consequently, a higher level of environmental protection could be achieved by the current level of funding. Additional benefits of this project are enhancement of public and university education and increases in the availability of relevant published scientific formation. Through the introduction of the publication, ''Technology'' and the first volume of ''Encyclopedia of Environment'' the public will have easier access to data presented in relevant papers and consensus reports regarding BAS. Education will be enhanced by the utilization of high school or community college minority students in researching environmental issues while applying BAS, participating with professional organizations in providing environmental courses, participation in technical conferences to discuss BAS for environmental issues, as well as participating in technical panels and making presentations to various groups regarding BAS in human health and environmental concerns.

The grantee plans to obtain this objective by educating students and professional organizations about the benefits and needs of BAS in relation to existing practices; and the dissemination of scientific information through the Technology publication and the new Encyclopedia of Environment. To assure reliance upon BAS the grantee proposes the utilization of not-for-profit professional organizations which include the following: (1) the American Society of Mechanical Engineers (ASME); (2) the American Association for the Advancement of Technology (AAAT); (3) the American Association of Engineering Societies (AAES); and (4) the National Council and Radiation Protection and Measurements (NCRPM). These organizations can provide peer-review of scientific aspects of the societal decisions, can reach a consensus on scientific subjects related to protection of human health and the environment, and can support the publication of relevant BAS. In addition, and in accordance with the North American Free Trade Agreement (NAFTA), an organization was formed and is known by its Spanish acronym ''CEPA'' which is composed of Universities in Mexico and the U.S. which pursue environmental protection in Mexico. The proposed approach permits the development of relevant information based on scientific consensus, education of the professionals and high school students,

and publication of relevant materials for the benefit of the scientific community, regulators, legislators, and above all, the general public.

The technical team is led by an outstanding and uniquely qualified individual, Dr. A. Alan Moghissi, Ph.D., Vice President for Science and Education at Equity Research Corporation. He has broad regulatory experience and has served as a Senior Environmental Protection Agency (EPA) policy official. His interaction with industry over the years has fulfilled a critical need in obtaining an industry perspective. He has gained credibility with the intervener community and Congress as a credible spokesman in the area of technical assessment of societal decisions. For the past 11 years under grants for this effort, Dr. Moghissi has gained unique experience and specialized knowledge in the reevaluation of risk assessments for human health and the environment. An example of the kind of accomplishments he has made is evident in the regulatory change that was made for tritium standards in drinking water. Moghissi, because of his unique past experience as stated above, is uniquely qualified to perform the proposed research.

This award meets the criteria for selection of an unsolicited application as specified under 10 CFR 600.14(e) (i) and (ii). Under subparagraph (i) the application is meritorious based on the foregoing general evaluation which is required by 10 CFR 600.14(d). Under subparagraph (ii) the proposed project represents a unique, innovative idea, method and approach which would not otherwise be eligible for funding under any other known recent, current, or planned solicitation and a competitive solicitation would be inappropriate. This award would be for approximately 5 years at an estimated total cost of 2.9 million dollars.

FOR FURTHER INFORMATION CONTACT: David Ramirez, Contract Specialist, (708) 252–2133; U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439.

Issued in Chicago, Illinois on August 31, 1995.

Cherri J. Langenfeld,

Manager, Chicago Operations Office.

[FR Doc. 95–22756 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance for Clark Atlanta University

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Notice of Financial Assistance Award.

SUMMARY: The Albuquerque Operations Office (AL), pursuant to 10 CFR 600.14(f), will award a grant based on an unsolicited proposal to Clark Atlanta University, 223 James P. Brawley Drive, SW, Atlanta, GA 30314.

DATES: Award will be effective September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Address written comments to the attention of Erwin E. Fragua, Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400, (505) 845–6442 or fax to (505) 845–4004.

SUPPLEMENTARY INFORMATION: Title of project is ''Analysis of Economic Success of Applied Energy R&D and Applied Energy R&D Case History''. The purpose of this study is to produce two special analyses of emerging science and technology issues regarding the overall effectiveness of the agency's research and development programs. The DOE has invested extensively in R&D covering a wide range of energy sources and end-use technologies. The U.S. public is entitled to a concise assessment of net benefits that have accrued from these investments. While individual success stories abound, there has not been a systematic effort to analyze the overall net impact of DOE's R&D activities on the economy. A cost/benefit approach will be used to analyze the DOE's basic and applied R&D programs, to identify and quantify commercial successes arising from DOE sponsored R&D programs. The study also prepares a case assessment of a successful DOE R&D program over the history of the program; identifying costs, economic and technical successes and estimating return on investment.

The probability of achieving this objective is significant considering the experienced background of the project director, Dr. Charlie Carter, and the facilities of the grantee are adequate for the purpose of achieving the stated objectives.

Issued in Albuquerque, New Mexico, on August 31, 1995.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 95–22757 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P–M

Financial Assistance for The Woods Hole Research Center

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Notice of Financial Assistance Award.

SUMMARY: The Albuquerque Operations Office (AL), pursuant to 10 CFR 600.14(f), will award a grant based on an unsolicited proposal to The Woods Hole Research Center, P.O. Box 296, Woods Hole, MA 02543.

DATES: Award will be effective September 20, 1995.

FOR FURTHER INFORMATION CONTACT: Address written comments to the attention of Erwin E. Fragua, Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400, (505) 845–6442 or fax to (505) 845–4004.

SUPPLEMENTARY INFORMATION: Title of project is ''International Conference on the Adequacy of Commitments Under the Framework Convention on Climate Change''. The purpose of this conference is to continue dialogue on the process to strengthen these commitments, similar to the ones previously held on joint implementation and on policy guidance from the Conference of the Parties (COP). The first meeting of the COP to the United Nations Framework Convention on Climate Change (FCCC) was held on March/April 1995 in Berlin. The Berlin Mandate concluded that current commitments under the FCCC are inadequate to meet the Convention's ultimate objective. It established a two year negotiating process to strengthen the specific commitments of industrialized countries and further implement the existing general commitments of developing countries. This process is authorized to elaborate policies and measures which could limit or reduce greenhouse gas emissions as well as set quantified limitation and reducing objectives within specified time-frames for the period beyond the year limitation and reducing objectives within specified time-frames for the period beyond the year 2000. The objective of this conference will be to have informal discussions among the key constituents of the Parties to the Climate Change Convention on the subject of the adequacy of commitments.

The probability of achieving this objective is significant considering the experienced background of the project director, Dr. Kilaparti Ramakrishna, and the facilities of the grantee are adequate for the purpose of achieving the stated objectives.

Issued in Albuquerque, New Mexico, on August 31, 1995.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 95–22758 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P–M

Environmental Management Site Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Fernald.

DATE AND TIME: Saturday, September 30, 1995: 8:30 a.m.–12:00 p.m.

ADDRESSES: The Joint Information Center, 6025 Dixie Highway, Route 4, Fairfield, Ohio.

FOR FURTHER INFORMATION CONTACT: John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force message line (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

Tentative Agenda

Saturday, September 30, 1995

8:30 a.m.—Task Force Administration, Call to Order, Approval of Minutes, Chair's Remarks
8:45 a.m.—Membership Issues: Expiring Terms, Role of Alternates, Process for Identifying New Members
9:45 a.m.—Review of Charter and Ground Rules
10:30 a.m.—Break
10:45 a.m.—FY 96 Work Plan and Meeting Dates
11:45 a.m.—Wrap Up
12:00 p.m.—Adjourn

A final agenda will be available at the meeting, Saturday, September 30, 1995.

Public Participation

The meeting is open to the public. Written statements may be filed with the Task Force chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Task Force chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Kenneth Morgan, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on September 8, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22759 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Pantex Plant.

DATES AND TIMES: Tuesday, September 26, 1995: 1:30 pm–5:30 pm.

ADDRESSES: Amarillo Association of Realtors, 5601 Enterprise Circle, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Pantex Plant Citizens' Advisory Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

1:30 pm—Welcome—Agenda Review—Introductions
1:40 pm—Co-Chairs' Comments
2:00 pm—Task Force Reports—Discussion
  Public Participation/Public Information
  Environmental Restoration
  Sitewide Environmental Impact Statements
  Future of the Nuclear Complex
  Waste Management
3:15 pm—Break
3:30 pm—Presentation
4:15 pm—Updates
  Occurrence Reports—DOE
  Special Pantex Site Treatment Plant (PSTP) Meeting Report
4:30 pm—Subcommittee Reports
- Budget and Finance
- Policy and Personnel
- Program and Training
- Community Outreach
- Nominations

5:30 pm—Adjourn

Public comment will be taken periodically throughout the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays.

Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on September 8, 1995.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–22760 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM96–1–68–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet Nos. 5 and 6, to be effective October 1, 1995.

Trailblazer states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1995 is $.0023 per Mcf.

Trailblazer requested a waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1995.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22682 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–67–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 6, to be effective October 1, 1995.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1995 is $.0023 per Mcf.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1995.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22681 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–55–000]

Questar Pipeline Company; Notice of Tariff Filing

September 7, 1995.

Take notice that on August 31, 1995, Questar Pipeline Company, pursuant to 154.38(d)(6) and Part 382 of the Commission's Regulations, tendered for filing and acceptance to be effective October 1, 1995, the following tariff sheets of its FERC Gas Tariff:

First Revised Volume No. 1

First Revised Substitute Fourth Revised Sheet No. 5
First Revised Fourth Revised Sheet No. 5A
First Revised Fourth Revised Sheet No. 6
First Revised Second Revised Sheet No. 6A

Original Volume No. 3

First Revised Fourteenth Revised Sheet No. 8

Questar states that this filing incorporates into its storage and transportation rates the annual charge unit rate of $0.0023 per Mcf as adjusted by Questar's Btu factor of 1.062.

Questar states that copies of this filing were served upon Questar's jurisdictional customers and the Utah and Wyoming public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22680 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–49–000]

Williston Basin Interstate Pipeline Company; Notice of Filing of Annual Charge Adjustment Filing

September 7, 1995.

Take notice that on September 1, 1995, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing to become part of its FERC Gas

Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets, with a proposed effective date of October 1, 1995:

Second Revised Volume No. 1

2nd Rev Thirteenth Revised Sheet No. 15
2nd Rev Sixteenth Revised Sheet No. 16
2nd Rev Thirteenth Revised Sheet No. 18
2nd Rev Eleventh Revised Sheet No. 21

Original Volume No. 2

2nd Rev 58th Revised Sheet No. 11B

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges under 18 CFR Part 382 and Section 41 of the General Terms and Conditions of Williston Basin's FERCG as Tariff, Second Revised Volume No. 1. The filing incorporates the Commission approved ACA surcharge of .233 cents per Mcf (.217 cents per dkt on the Williston Basin system), a decrease of .0036 cents per Mcf from the current amount.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22679 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–26–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 22, to be effective October 1, 1995.

Natural states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Natural to recover from its customers annual charges assessed to Natural by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1995 is $.0023 per Mcf. Under Natural's billing basis, this rate converts to $.0023 per MMBtu. Since the converted rate is the same as Natural's currently effective ACA surcharge, a revised tariff sheet was not submitted. Natural also filed to remove the ACA surcharge applicable on its Moraine Lateral.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the continuation of its currently effective ACA surcharge and the elimination of the ACA surcharge on its Moraine Lateral to become effective on October 1, 1995.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22678 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. TM96–2–18–000]

September 7, 1995.

Take notice that on September 1, 1995 Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 14, with a proposed effective date of November 1, 1995.

Texas Gas states that the tariff sheet is being filed to establish a revised Effective Fuel Retention Percentage (EFRP) under the provisions of Section 16 ''Fuel Retention'' as found in the General Terms and Conditions of Texas Gas' FERC Gas Tariff, First Revised Volume No. 1. The revised EFRP may be in effect for the annual period November 1, 1995, through October 31, 1996.

Texas Gas states that copies of the tariff sheet are being mailed to Texas Gas' affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22677 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–15–000]

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Mid Louisiana Gas Company (Mid Louisiana) filed to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 4
Fifth Revised Sheet No. 4A
Fourth Revised Sheet No. 4B.

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheets is to reflect a revision to the unit rates for the collection of the Annual Charges imposed by Section 382 of the Commission's Regulations.

Mid Louisiana states that this filing is being made in accordance with Section 22 of the General Terms and Conditions of Mid Louisiana's FERC Gas Tariff, Third Revised Volume No. 1.

Pursuant to Section 154.51 of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any requirement of the Regulations to permit the tendered tariff sheets to

become effective October 1, 1995 as submitted.

Mid Louisiana states that copies of its filing were served upon its jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22676 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–8–000]

South Georgia Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, South Georgia Natural Gas Company (South Georgia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, to be effective October 1, 1995:

First Revised Sheet No. 5
First Revised Sheet No. 6

In the Alternative:

First Alternate First Revised Sheet No. 5
First Alternate First Revised Sheet No. 6

South Georgia states that the instant filing is submitted pursuant to Section 19.2 of the General Terms and Conditions of its Tariff, and the letter order issued on July 14, 1995, in Docket No. RP95–355 granting it an extension of time to file, to adjust its fuel retention percentage (''FRP'') for all transportation services on its system effective October 1, 1995. The derivation of the revised FRP is based on South Georgia's gas required for operations (''GRO'') for the twelve-month period ending April 30, 1995, adjusted for the balance accumulated in the Deferred GRO Account at the end of said period, divided by the transportation volumes received during the same twelve-month period. Based on this calculation, the revised FRP should be 2.99%, but South Georgia has requested a waiver of its Tariff to allow for the collection of the Deferred GRO Account over a three-year period which results in a revised FRP of 2.25%. If the Commission does not grant its waiver, South Georgia has submitted alternate tariff sheets for approval by the Commission.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 925 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 14, 1995. Protests will not be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22675 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA96–1–23–000 and TM96–3–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such revised tariff sheets bear a proposed effective date of November 1, 1995.

Eastern Shore states the above referenced revised tariff sheets were filed in Eastern Shore's annual Purchased Gas Adjustment (PGA) filing as required by Section 154.305 of the Commission's Regulations and Sections 21 and 23, respectively, of the General Terms and conditions of Eastern Shore's FERC Gas Tariff. Such filing consists of the calculation of (1) current adjustments for the Demand and Commodity purchased gas component and (2) current adjustments for the Demand and Commodity transportation cost component, of Eastern Shore's jurisdictional sales rates.

Eastern Shore states its sales rates set forth on such revised tariff sheets reflect an overall increase of $2.4323 per dt in the Demand Charge and an overall increase of $0.2255 per dt in the Commodity Charge, as measured against Eastern Shore's revised regularly scheduled quarterly PGA filing as submitted in Docket No. TQ95–4–23–001 in Eastern Shore's Compliance Filing submitted on August 29, 1995.

Eastern Shore states that the calculation of revised annual Demand and Commodity surcharge calculations to amortize its Account No. 191 Unrecovered Purchased Gas Cost and Unrecovered Transportation Cost balances as of June 30, 1995 are not included in its annual PGA filing and requests the Commission to waive its regulations in this regard.

Eastern Shore states it submitted on August 29, 1995 a Compliance Filing to comply with the Commission's order issued August 17, 1995 in Docket Nos. TA94–1–23–003, et al. The Commission's order approved Eastern Shore's Offer of Settlement (''Settlement'') as filed on June 19, 1995 pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. More specifically, the filing was submitted in accordance with Articles I, II, and III of the Settlement.

Article I provided that, within fifteen days after the Commission approved the Settlement, Eastern Shore shall file revised Purchased Gas Adjustment (PGA) and Transportation Cost Adjustment (TCA) tariff sheets. Pursuant to the Settlement, these revised tariff sheets will be made effective June 1, 1994.

Article II of the Settlement provided that Eastern Shore shall make cash refunds to its jurisdictional sales customers arising from the revised PGA methodology. Refunds shall be computed from June 1, 1994 through June 30, 1995. Such period coincides with the end of the twelve-month deferral period which ends four months prior to the November 1, 1995 effective date of Eastern Shore's forthcoming annual PGA filing. Accordingly, Eastern Shore states that its Account No. 191 demand and commodity deferral balances shall be zeroed out as of June 30, 1995, thus eliminating the need for Eastern Shore to calculate surcharge rates to amortize such balances in the instant annual PGA filing.

Article III provided that Eastern Shore shall file revised rate tariff sheets to be effective July 1, 1995. Such revised tariff sheets reflect a reduction of $0.9317 per dt in Eastern Shore's jurisdictional

contract demand sales rates. This reduction is accomplished by restating Eastern Shore's Base Tariff Rates to reflect an equivalent decrease. In addition, the restated Base Tariff Rates reflect Eastern Shore's cumulative PGA and TCA adjustments as filed in Docket No. TQ95–3–23–000. Such filing, accepted by the Commission on May 22, 1995, to be effective May 31, 1995, was Eastern Shore's most recently approved filing prior to July 1, 1995.

Eastern Shore further states it filed revised rate tariff sheets necessary to reflect the effect of the implementation of the Settlement on its various filings made subsequent to July 1, 1995. Such filings include (1) Docket No. TF95–5–23–000, an interim PGA approved to be effective July 1, 1995; (2) Docket No. TQ95–4–23–000, a quarterly PGA filing approved to be effective August 1, 1995; (3) Docket No. TF95–6–23–000, an interim PGA filing approved to be effective August 1, 1995; and (4) Docket No. TM95–11–23–000, a tracking filing approved to be effective September 1, 1995.

Eastern Shore states it is currently in the process of finalizing its refund calculations and intends to make such refunds at its earliest opportunity, but in no event later than September 15, 1995. As directed by the Commission, Eastern Shore will file a refund report within thirty days of the refund distribution. Such refund report shall contain all the relevant FERC Form 542–PGA schedules normally submitted with its annual PGA filing to fully document the Account No. 191 Unrecovered Purchased Gas Cost and Unrecovered Transportation Cost balances as of June 30, 1995, calculated pursuant to Eastern Shore's revised PGA and TCA provisions included in Eastern Shore's August 29, 1995 Compliance Filing.

Eastern Shore states that copies of the filing have been served upon its jurisdictional sales customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22674 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–435–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858-Reverse Auction surcharges, which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed 4th Rev Seventeenth Revised Sheet Nos. 50 and 51 and Twenty-Third Rev Sheet No. 53 to revise these surcharges effective October 1, 1995.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22673 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–434–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

September 7, 1995.

Take notice that on September 1, 1995, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective October 1, 1995.

Fourth Revised Sheet No. 35
Third Revised Sheet No. 81
First Revised Sheet No. 84A
Second Revised Sheet No. 98
Third Revised Sheet No. 106
Second Revised Sheet No. 124
Third Revised Sheet No. 131
Second Revised Sheet No. 158
Second Revised Sheet No. 232

CIG proposes this revision so that the ratio of Maximum Daily Withdrawal Quantity to Maximum Available Capacity reflects the actual certificated deliverability of 780,000 Mcf/d for CIG's storage fields. CIG states that it is filing this tariff revision in response to the Commission's order issued July 7, 1995 in Docket No. CP95–498–000 which increased the total certificated daily deliverability of CIG's storage fields from 775,000 Mcf/d to a new level of 780,000 Mcf/d. CIG states this increase is the result of the actual performance gain from facilities constructed with Commission authorization to enhance storage deliverability in Docket No. CP92–154 et al.

The Commission authorized CIG, inter alia, to construct and operate certain facilities to increase the estimated peak day deliverability of CIG's storage fields from 710,000 Mcf/d to a higher level of 775,000 Mcf/d. CIG further states when it filed for authorization of the storage enhancement project, it was impossible to determine the precise level of the increased storage deliverability that would result from the project. Hence, CIG states it allocated capacity based on an estimated storage deliverability of 769,000 Mcf/d.

CIG states it is filing to revise its Tariff so the firm storage entitlement of firm storage customers (Rate Schedule FS–1) and no-notice transportation customers (Rate Schedules NNT–1 and NNT–2), reflect the new certificated deliverability. All of the 11 Mmcf/d storage deliverability upgrade has been allocated to storage customers. CIG's storage customers total deliverability will increase from 669 Mmcf/d to 680 Mmcf/d and CIG's retained deliverability will remain at 100 Mmcf/d. Based on this allocation, the ratio of Maximum Daily Withdrawal Quantity to Maximum Available Capacity will be revised to 1:37.3853. CIG also states it is filing housekeeping revisions to Sheet Nos. 35 and 84A to correct errors on these sheets.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene

or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 or 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22672 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–196–001, RP94–157–004, and RP95–196–002; RP95–392–000]

Notice of Technical Conference

September 7, 1995.

In the matter of Columbia Gas Transmission Corporation, *UGI Utilities, Inc.* v. *Columbia Gulf Transmission Company* and *Columbia Gas Transmission Corporation*.

In the Commission's order issued on August 2, 1995, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Wednesday, September 27, 1995, at 10:00 a.m., and if necessary the conference will continue on Thursday, September 28, 1995, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22671 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–73–000]

Ozark Gas Transmission System; Notice of Proposed Change in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Ozark Gas Transmission System (Ozark), tendered for filing and acceptance the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Eleventh Revised Sheet No. 4

Ozark proposed that the tariff sheet become effective on October 1, 1995.

Ozark states that the above tariff sheet has been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to Ozark. The Annual Charge unit charge authorized by the Commission for fiscal year 1996 and proposed in the filing is $0.0023 per MMBtu.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22684 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–92–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Mojave Pipeline Company (Mojave) tendered for filing proposed changes to Sheet No. 11 of its FERC Gas Tariff, First Revised Volume No. 1.

Mojave makes this filing to implement its annual adjustment clause (ACA) for fiscal year 1996, pursuant to Section 154.38(d)(6) of the Commission's Regulations, which allows a natural gas pipeline company to adjust its rates annually to recover from its customers annual charges assessed it by the Commission under Part 382 of the Commission's Regulations. The ACA charge shall be applied to the transportation component of Mojave's rates under its Rate Schedules FT–1 and IT–1. Additional information regarding Mojave's ACA charge is contained on Sheet Nos. 127 and 128 of the First Revised Volume No. 1 of Mojave's existing gas tariff.

Mojave states that copies of the filing were served upon Mojave's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22685 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1439–000]

IGM, Inc.; Notice of Issuance of Order

September 7, 1995.

On July 27, 1995, IGM, Inc. (IGM) submitted for filing a rate schedule under which IGM will engage in wholesale electric power and energy transactions as a marketer. IGM also requested waiver of various Commission regulations. In particular, IGM requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by IGM.

On August 28, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by IGM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, IGM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided

that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of IGM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 27, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22686 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1441–000]

Conoco Power Marketing Inc.; Notice of Issuance of Order

September 7, 1995.

On July 27, 1995, Conoco Power Marketing Inc. (Conoco Power) submitted for filing a rate schedule under which Conoco Power will engage in wholesale electric power and energy transactions as a marketer. Conoco Power also requested waiver of various Commission regulations. In particular, Conoco Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Conoco Power.

On August 30, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Conoco Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Conoco Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Conoco Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 29, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22687 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–1–69–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 5, to be effective October 1, 1995.

Stingray states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Stingray to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1995 is $.0023 per Mcf. Under Stingray's billing basis, this rate converts to $.0022 per Dekatherm.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1995.

Stingray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22683 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–715–000]

Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company; Notice of Application

September 7, 1995.

Take notice that on August 29, 1995, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, and Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP95-715–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain exchange and transportation services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern and Tennessee state that they were authorized: (1) An interruptible exchange service by Commission order dated March 18, 1963, in Docket No. CP63–177–000, as amended, which is provided under Texas Eastern's Rate Schedule X–65 and Tennessee's Rate Schedule X–40; (2) a firm transportation and exchange of up to 230,000 Mcf of natural gas per day, by Commission order dated July 18, 1975, in Docket No. CP75–127–000, as amended, which is provided under Texas Eastern's Rate Schedule X–73 and Tennessee's Rate Schedule X–47; (3) an interruptible exchange and transportation of up to 10,000 Mcf of natural gas per day, by Commission order dated May 5, 1980, in Docket No. CP80–62–000, as amended, which is provided under Texas Eastern's Rate Schedule X–111 and Tennessee's Rate Schedule X–63; and, (4) an interruptible transportation and exchange service, by Commission order dated June 20, 1986, in Docket No. CP86–123–000, as amended, which is provided under Texas Eastern's Rate Schedule X–126 and Tennessee's Rate Schedule X–68.

Texas Eastern and Tennessee have mutually agreed to terminate the one exchange and three exchange and transportation services pursuant to termination agreements between Tennessee and Texas Eastern dated August 23, 1995, July 7, 1995, May 16, 1995 and May 16, 1995 for Texas Eastern's Rate Schedules X–65, X–73, X–111 and X–126 and Tennessee's Rate Schedules X–40, X–47, X–63 and X–68, respectively, it is stated. Texas Eastern and Tennessee request that the abandonment be effective on the day of issuance of the Commission's order approving abandonment.

Texas Eastern and Tennessee further state that no facilities will be abandoned in conjunction with the abandonment of these services.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 28, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern and Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22667 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–728–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

September 7, 1995.

Take notice that on September 1, 1995, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84108–0900, filed in Docket No. CP95–728–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to modify facilities at the Burley No. 2 Meter Station, Cassia County, Idaho, used to perform transportation service for Intermountain Gas Company (Intermountain), under the blanket certificate issued in Docket No. CP82–433–000, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the Burley No. 2 Meter Station currently consists of two 4-inch taps, four 2-inch regulators, monitor configuration, two 6-inch orifice meters and appurtenances, with a maximum design capacity of approximately 8,883 dt equivalent of natural gas per day at 200 psia. Northwest indicates that at present it has firm obligations to deliver up to 9,000 dt equivalent of natural gas per day at 200 psig for Intermountain's affiliate, IGI Resources, Inc. (IGI) at the Burley No. 2 Meter Station under a Rate Schedule TF–1 transportation agreement.

Northwest proposes to modify the meter station by removing two of the four existing 2-inch regulators and appurtenances and installing appurtenant station piping valves. Northwest indicates that the facility replacement will increase the maximum design capacity of this meter from 8,883 dt equivalent of natural gas per day at 200 psia to approximately 12,400 dt equivalent of natural gas per day at 200 psia or 10,900 dt equivalent of natural gas per day at the 300 psig typical operating pressure. Northwest estimates a construction and removal cost of $3,840. It is indicated that, since this expenditure is necessary in order for Northwest to more efficiently accommodate existing delivery requirements at the Burley No. 2 Meter Station, Northwest will not require any cost reimbursement from IGI.

Northwest advises that any volumes delivered to intermountain through the Burley No. 2 Meter Station will be delivered either for IGI or any other shipper for whom Northwest is authorized to transport gas and will be within the authorized entitlements of such shippers. Also, Northwest indicates that the proposed facility modification is not prohibited by its existing tariff. In addition, Northwest states that it projects no impact on Northwest's system peak day or annual deliveries as a result of the facility modifications.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22668 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–57–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

September 7, 1995.

Take notice that on September 1, 1995, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that pursuant to Section 9.1 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A set forth the 1995 Operational Segment Capacity Entitlements. Texas Eastern states further that the 1995 Entitlements were calculated using the same methodology as utilized to calculate the

initial Entitlements which were approved by the Commission in Texas Eastern's Order No. 636 restructuring proceedings in Docket No. RS92–11, *et al.*

In order to reflect the changes discussed above, Texas Eastern is submitting Tenth Revised Sheet Nos. 550, 551, 555, 557, 558, 564, 565, 571, 572, 577 and 580 and Eleventh Revised Sheet Nos. 549, 556, 563 and 570 to reflect necessary modifications to Sections 9.2, 9.3, 9.4, 9.5 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1.

The proposed effective date of the tariff sheets is November 1, 1995, as stated in Section 9.1 of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22669 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–76–000]

Southwestern Public Service Company; Notice of Filing

September 7, 1995.

Take notice that on August 25, 1995, Southwestern Public Service Company tendered for filing a petition for waiver of the Commission's fuel clause regulations to allow the flow-through of buyout and other related costs associated with the purchase of TUCO Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 25, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22670 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–430–002, et al.]

Phibro Inc., et al.; Electric Rate and Corporate Regulation Filings

September 5, 1995.

Take notice that the following filings have been made with the Commission:

1. Phibro Inc.

[Docket No. ER95–430–002]

Take notice that on August 16, 1995, Phibro Inc. tendered for filing a Notice of Change in Status in the above-referenced docket.

2. Pacific Gas and Electric Company

[Docket No. ER95–1341–000]

Take notice that on August 28, 1995, Pacific Gas and Electric Company (PG&E), tendered for filing an amendment to its July 6, 1995 filing in this docket of a rate change to Rate Schedule FERC No. 79, between PG&E and the Western Area Power Administration (Western).

PG&E's initial filing in this docket submitted cost based rates for trued up previous billings made for capacity and energy sales from Energy Account No. 2 during 1993, which were made using rates based on estimated costs. At the request of FERC Staff, PG&E is amending its filing to include a calculation of certain refunds, including interest, resulting from this rate change.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Electric & Gas Company

[Docket No. ER95–1428–000]

Take notice that on August 7, 1995, South Carolina Electric & Gas Company tendered for supplemental information in the above-referenced docket.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER95–1472–000]

Take notice that on August 29, 1995, New England Power Company (NEP), tendered for filing a Stipulation and Agreement and amended supplements to five Municipal Power Contracts: (1) Unit Power Contract dated January 13, 1994, with the Town of Holden Municipal Light Department; (2) Unit Power Contract dated January 20, 1994, with the North Attleborough Electric Department; (3) Unit Power Contract dated January 11, 1994, with the Hingham Municipal Light Plant; (4) Unit Power Contract dated January 13, 1994, with the Groton Electric Light Department; and (5) Unit Power Contract dated January 14, 1994, with the Middleton Municipal Light Department.

NEP states that the purpose of this filing is to modify its initial proposal concerning rate of return on common equity that may be charged under the contracts. This modification is a result of an agreement between NEP and the five municipal purchasers. NEP requests that its revised proposed rate of return become effective on the later of October 1, 1995 or the first day of the calendar month following the date of commencement of operations at the repowered Manchester Street facility.

NEP states that copies of its filing have been provided to the five municipal purchasers and to state regulatory authorities in Massachusetts and Rhode Island.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER95–1536–000]

Take notice that on August 14, 1995, Florida Power Corporation tendered for filing a tariff providing for comprehensive transmission service. Florida Power states that its filing modifies its Tariff No. 2 that was filed in Docket No. ER95–634–000 and that its tariff is consistent with the draft pro forma tariffs the Commission included with the proposed rule in ''Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities,'' Docket No. RM95–8–000, IV FERC Stats. and Regs. ¶ 35,514 (1995). Florida Power asks the Commission to consolidate this docket with Docket No.

ER95–634–000 and set an effective date for this filing of November 1, 1995.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Missouri Public Service Company

[Docket No. ER95–1608–000]

Take notice that on August 22, 1995, UtiliCorp United Inc. tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with *National Electric Associates Limited Partnership*. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to *National Electric Associates Limited Partnership* pursuant to the tariff, and for the sale of capacity and energy by *National Electric Associates Limited Partnership* to Missouri Public Service pursuant to *National Electric Associates Limited Partnership's* Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by *National Electric Associates Limited Partnership*.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Arkansas Power & Light Company, et al.

[Docket No. ER95–1609–000]

Take notice that on August 22, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing a Transmission Service Agreement (TSA) between Energy Services and Catex Vitol Electric, LLC (Catex Vitol). Entergy Services states that the TSA sets out the transmission arrangements under which the Entergy Operating Companies will provide Catex Vitol non-firm transmission service under their Transmission Service Tariff.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Wisonsin)

[Docket No. ER95–1638–000]

Take notice that on August 28, 1995, Northern States Power Company, Eau Claire, Wisconsin (NSPW), tendered for filing the following documents:

A. An Amended and Restated Power and Energy Supply Agreement by and between the Village of Cadott, Wisconsin, and NSPW dated August 7, 1995. The Village currently purchases power and energy from NSPW under a power sales agreement dated November 25, 1986, as amended on June 17, 1987, and May 16, 1994. The 1986 agreement as amended is superseded by the amended and restated agreement. NSPW submitted a Certificate of Concurrence on behalf of the Village of Cadott.

B. A Power and Energy Supply Agreement by and between the City of Spooner, Wisconsin, and NSPW dated July 28, 1995. The City of Spooner currently purchases power and energy from NSPW under a firm power service resale agreement dated May 2, 1978, which is superseded by the new agreement. NSPW submitted a Certificate of Concurrence on behalf of the City of Spooner.

C. An Amended and Restated Power and Energy Supply Agreement by and between the City of Bloomer, Wisconsin, and NSPW dated August 9, 1995. The City of Bloomer currently purchases power and energy from NSPW under a power and energy supply agreement dated March 1, 1993, as amended on May 25, 1994. The 1992 agreement as amended is superseded by the amended restated agreement. NSPW submitted a Certificate of Concurrence on behalf of the City of Bloomer.

NSPW requests an effective date of September 1, 1995 for all three agreements. NSPW states that under these new agreements, the Village of Cadott, City of Spooner and City of Bloomer will be entitled to discounts from NSPW's currently effective W–1 rate and that such discounts are being offered to all of its wholesale electric customers. Each of the agreements contains a provision allowing the customer to obtain a negotiated rate upon two years prior notice.

A copy of the filing was served upon the Village of Cadott, City of Spooner, City of Bloomer and the State of Wisconsin Public Service Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER95–1641–000]

Take notice that on August 29, 1995, Cinergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated July 1, 1995, between CIN, CG&E, PSI and Kimball Power Company (KPC).

The Interchange Agreement provides for the following service between CIN and KPC:

1. Exhibit A—Power Sales by KCP
2. Exhibit B—Power Sales by CIN

CIN and KPC have requested an effective date of September 1, 1995.

Copies of the filing were served on Kimball Power Company, the Texas Public Utility Commission, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER95–1642–000]

Take notice that on August 29, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Engelhard Power Marketing (Engelhard) dated August 23, 1995 providing for certain transmission services to Engelhard.

Copies of this filing were served upon Engelhard and the New York State Public Service Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Boston Edison Company

[Docket No. ER95–1643–000]

Take notice that on August 29, 1995, Boston Edison Company (Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for PECo Energy Company (PECo). Boston Edison requests that the Service Agreement become effective as of June 1, 1995.

Edison states that it has served a copy of this filing on PECo and the Massachusetts Department of Public Utilities.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER95–1644–000]

Take notice that on August 29, 1995, Boston Edison Company (Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for North American Energy Conservation, Inc. (NAEC). Boston Edison requests that the Service Agreement become effective as of October 29, 1995.

Edison states that it has served a copy of this filing on NAEC and the Massachusetts Department of Public Utilities.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER95–1645–000]

Take notice that on August 29, 1995, Northern States Power Company-Minnesota (NSP–M) and Northern States Power Company-Wisconsin (NSP–W) jointly tendered and request the Commission to accept two Transmission Service Agreements which provide for Limited and Interruptible Transmission Service to Utility-2000 Energy Corporation.

NSP requests that the Commission accept for filing the Transmission Service Agreements effective as of September 27, 1995. NSP requests a waiver of the Commission's notice requirements pursuant to Part 35 so the Agreements may be accepted for filing effective on the date requested.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Appalachian Power Company

[Docket No. ER95–1646–000]

Take notice that on August 29, 1995, Appalachian Power Company (APCO), tendered for filing a proposed amendment to its Electric Service Agreement with the City of Radford, Virginia (Radford), Rate Schedule FERC No. 122. The proposed amendment will establish an Economic Development Electric Power Billing Credit for Radford that would provide Radford with an opportunity to offer an economic incentive for development of new industries and/or expansion of existing industries in its service area.

APCO proposes an effective date of November 1, 1995, and states that copies of the filing were served upon the affected customer and the Virginia State Corporation Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER95–1647–000]

Take notice that on August 29, 1995, PECO Energy Company (PECO), filed a Service Agreement dated August 17, 1995, with Public Service Electric and Gas Company (PSE&G) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds PSE&G as a customer under the Tariff.

PECO requests an effective date of August 17, 1995, for the Service Agreement.

PECO states that copies of this filing have been supplied to PSE&G and to the Pennsylvania Public Utility Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER95–1648–000]

Take notice that on August 28, 1995, Southern California Edison Company (Edison), tendered for filing an amendment to its Interruptible Transmission Service Agreements not amended under the Settlement Agreement in FERC Docket No. ER94–1421–000.

The Amendment sets forth the terms and conditions by which Edison will provide customers with Non-Priority and Priority interruptible transmission service.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER95–1649–000]

Take notice that on August 29, 1995, Cinergy Services, Inc. (CIN), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated July 17, 1995, between CIN, CG&E, PSI and Heartland Energy Services, Inc. (HES).

The Interchange Agreement provides for the following service between CIN and HES.

1. Exhibit A—Power Sales by HES
2. Exhibit B—Power Sales by CIN

CIN and HES have requested an effective date of September 1, 1995.

Copies of the filing were served on Heartland Energy Services, Inc., the Public Service Commission of Wisconsin, the Kentucky Public Service Commission, Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Electric Power Company

[Docket No. ER95–1650–000]

Take notice that on August 28, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an amendment of its filing of pro forma network and point to point transmission tariffs. The amendment corrects several pages that were inadvertently submitted for another proceeding as well as corrects a photocopying error.

Wisconsin Electric renews its requested effective date of August 1, 1995.

Copies of the filing have been served on the service list maintained in Docket Nos. ER94–1625, *et al.*

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Company

[Docket No. ER95–1652–000]

Take notice that on August 30, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreement and a Transmission Service Agreement between itself and Tennessee Power Company (TPCO). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff. The Transmission Service Agreement allows TPCO to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Original Volume 1, Rate Schedule T–1.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on TPCO, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. The Montana Power Company

[Docket No. ER95–1653–000]

Take notice that on August 30, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a Unit Contingent Capacity and Associated Energy Sales Agreement between Montana and Heartland Energy Services (Heartland).

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Louis E. Buck, Jr.

[Docket No. ID–2913–000]

Take notice that on August 28, 1995, Louis E. Buck, Jr. (Applicant) tendered for filing a supplemental application under Section 305(b) of the Federal

Power Act to hold the following positions:

Vice President, Chief Accounting Officer and Assistant Secretary, Arkansas Power & Light Company

Vice President, Chief Accounting Officer and Assistant Secretary, Gulf States Utilities Company

Vice President, Chief Accounting Officer and Assistant Secretary, Louisiana Power & Light Company

Vice President, Chief Accounting Officer and Assistant Secretary, Mississippi Power & Light Company

Vice President, Chief Accounting Officer and Assistant Secretary, New Orleans Public Service Inc.

Vice President and Chief Accounting Officer, System Energy Resources, Inc.

Comment date: September 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–22688 Filed 9–12–95; 8:45 am]

BILLING CODE 6717–01–P

Notice of Issuance of Decisions and Orders During the Office of Hearings and Appeals Week of June 5 through June 9, 1995

During the week of June 5 through June 9, 1995 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Richard M. Ross, 6/8/95, VFA–0041

Richard M. Ross filed an Appeal from a determination issued by the Oakland Operations Office (Oakland) of the Department of Energy in response to a request from him under the Freedom of Information Act (FOIA). Ross sought copies of records concerning past and present employment of nine identified DOE employees. In considering this Appeal, the DOE found that certain aspects of the search conducted by Oakland were inadequate and that Oakland had improperly withheld certain records concerning the private employment history of DOE employees pursuant to Exemption 6 of the FOIA. Accordingly, the Appeal was granted in part.

Rocky Flats Field Office, 6/5/95, VSO–0015

An Office of Hearings and Appeals Hearing Officer issued an opinion under 10 C.F.R. part 710 concerning the continued eligibility of an individual for access authorization. After considering the testimony at the hearing convened at the request of the individual and all other information in the record, the Hearing Officer found that the individual has been a user of alcohol habitually to excess and that the diagnosis by a board-certified psychiatrist that the individual was suffering from alcohol abuse was based upon essentially undisputed facts. The Hearing Officer also found that the individual had failed to present sufficient evidence of rehabilitation, reformation or other factors to mitigate the derogatory information under 10 C.F.R. 710.8(j). In particular, the Hearing Officer found that the individual had consumed excessive amounts of alcohol at least twice during the period of time that he claimed that his drinking was under control. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

Refund Application

Texaco Inc./Joe Long's Texaco, 6/7/95 RF321–21065

The Department of Energy (DOE) issued a Decision and Order (D&O) rescinding a refund that had been granted to Joe Long's Texaco. The refund was rescinded and the funds ordered redeposited into the Texaco escrow account because the DOE was unable to locate Mr. Long.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Motor Freight Express et al	RF304–12216	06/07/95
Borough of Highland Park et al	RF272–97500	06/07/95
Gulf Oil Corporation/Howe Oil Company, Inc.	RF300–20421	06/07/95
Gulf Oil Corporation/South Bay Gulf	RF300–13963	06/07/95
Texaco Inc./Field's Texaco Service et al	RF321–220	06/07/95
Texaco Inc./Fruitwood Texaco et al	RF321–4975	06/07/95
Texaco Inc./W.C. Hancock	RF321–20458	06/09/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Albuquerque Operations Office	VSO–0025
Atchison, Topeka & Santa Fe Railway	RF304–13208
Bill's Texaco	RF321–20534
Enchanted Oaks Texaco	RF321–6691
Herb's Texaco & Repair Shop	RF321–20108
Hyde Park Super Service Station	RF321–20848
Monte Sweet's Self Service	RF321–11320

Name	Case No.
Oak Ridge Operations	VSO–0030
Patterson & Brasher Texaco	RF321–20589
Petroleum Service Co.	RF321–20590
Ross Texaco	RF321–7195
Sir John's ARCO	RF304–14820

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: September 5, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–22762 Filed 9–12–95; 8:45 am]

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Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of May 29 Through June 2, 1995

During the week of May 29 through June 2, 1995 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Elizabeth H. Donnelly, 6/2/95, VFA–0039

Elizabeth H. Donnelly filed an Appeal from a determination issued to her on April 3, 1995 by the Department of Energy's Nevada Operations Office. In that determination, the Nevada Operations Office denied Ms. Donnelly's request for information filed pursuant to the Freedom of Information Act (FOIA). Specifically, the Nevada Operations Office denied Ms. Donnelly's request for information related to a ''hostile work environment study'' pursuant to FOIA Exemption 5. In considering the Appeal, the DOE found that the determination to withhold the requested information pursuant to Exception 5 was consistent with the FOIA. Accordingly, the DOE denied Ms. Donnelly's Appeal.

Gayle M. Adams, 6/1/95, VFA–0040

Gayle M. Adams filed an Appeal from a determination issued to her by the Richland Operations Office of a Request for Information which she had submitted under the Freedom of Information Act. The Richland Operations Office had released responsive documents, but Adams challenged the adequacy of the DOE's search. In considering the Appeal, the OHA found that the search for responsive documents was adequate.

J. Eileen Price, 6/2/95, VFA–0038

J. Eileen Price (Price) filed an Appeal from a determination issued to her by the Department of Energy's Western Area Power Administration (WAPA), that partially denied a Request for Information which Mrs. Price submitted under the Freedom of Information Act. Price requested copies of all appaisal information in her personnel file and all unofficial information pertaining to her employment in WAPA's Loveland Area Office beginning in October 1992. In its determination letter, the WAPA stated that it had found two documents responsive to Price's request, a grievance investigation document (Grievance Document) and a chronology of events related to her grievance (Chronology). Additionally, WAPA stated that it had found various pages from the day planners (Day Planner Notes) of two of her supervisors which were potentially responsive to her request. WAPA provided Price with a copy of the Chronology but withheld the Grievance Documents claiming that the Grievance Document was predecisional and deliberative and thus exempt from disclosure under Exemption 5 of the FOIA. Additionally, WAPA determined that Day Planner Notes were not agency records for the purposes of the FOIA and thus not subject to disclosure. Price argued that WAPA improperly withheld the Day Planner Notes and the Grievance Document. The DOE determined that, while the Grievance Document was predecisional and deliberative, a significant portion of the document contained segregable factual material which was improperly withheld from Price. The DOE further found that WAPA correctly determined that the Day Planner Notes were not agency records subject to disclosure under the FOIA. Consequently, Price's Appeal was granted in part.

U.S. Solar Roof, 5/30/95, VFA–0037

U.S. Solar Roof (Solar Roof) filed an Appeal from a determination issued to it on April 4, 1995 by the Director of the Photovoltaic Technology Division of the Office of Energy Efficiency and Renewable Energy (EE) of the Department of Energy. In that determination, EE denied in part a request for information submitted by Solar Roof on February 27, 1995 under the Freedom of Information Act (FOIA). The EE released two specific items but withheld seven items in their entirety pursuant to 5 U.S.C. § 552(b)(5) (Exemption 5). In its Appeal, Solar Roof challenged EE's April 4, 1995 determination and asserted that EE improperly applied Exemption 5 to the withheld information, and requested that the OHA direct EE to release it. In considering the Appeal, the Office of Hearings and Appeal (OHA) found EE properly applied the threshold requirements of Exemption 5 to the withheld information. However, the OHA remanded this Appeal to EE to issue a new determination, either releasing the withheld information or providing a more adequate consideration of the public interest in its disclosure. Therefore, the DOE granted in part and denied in part Solar Roof's Appeal.

Home Oil Co., Inc., 6/1/95, LEE–0135

Home Oil Co., Inc., (Home Oil) filed an Application for Exception from the requirement to file Form EIA–782B, ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' If granted, Home Oil would no longer be required to file Form EIA–782B. On consideration, the DOE denied Home Oil's Application for Exception. In denying the exception request, the DOE considered that Home Oil had not shown that filing Form EIA–782B constituted an undue hardship, gross inequity, or unfair distribution of burdens.

Refund Applications

Atlantic Richfield Co./Seago Enterprises, Inc., 6/1/95, RF304–13736

The DOE issued a Decision and Order partially granting an Application for

Refund filed by Seago Enterprises, Inc., in the ARCO special refund proceeding. The firm had applied for a refund based upon product purchased during 1973 and 1974, part of which was resold to ARCO. Seago's 1973 ARCO purchases were subject to a fixed-price contract based upon January 1973 prices. Seago's purchases were therefore at prices significantly below prevailing market prices, and the DOE found that Seago was not injured with respect to these purchases. With respect to the product that was resold to ARCO, because the contracts guaranteed Seago a fixed profit margin, the firm was also not injured with respect to those purchases. Therefore, the DOE determined that Seago was entitled to a refund only for its 1974 purchases that were not resold to ARCO.

Gulf Oil Corporation/Hinds Gulf, 5/30/95, RR300–253

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the Gulf Oil Corporation special refund proceeding by Roger C. Hinds, on behalf of Hinds Gulf. In its Motion, Hinds requested that the DOE reconsider a May 5, 1993 Decision and Order dismissing the refund application of Hinds Gulf on the ground that it was filed after the March 1, 1993 deadline for the Gulf proceeding. *See Gulf Oil Corp./Hind's Gulf,* Case No. RF300–21736 (May 5, 1993) (unpublished decision).

In considering the Motion, the DOE determined that Hinds had not presented any compelling reason that would warrant acceptance of the late application. Specifically, the DOE determined that lack of knowledge concerning the deadline did not provide a compelling reason for acceptance of a late application. Accordingly, the Motion for Reconsideration was denied.

Gulf Oil Corporation/Moore's Fuel Service, 5/30/95, RF300–13106, RF300–19809, RF300–21827

The DOE issued a Decision and Order resolving competing Applications for Refund filed in the Gulf Oil Corporation special refund proceeding for Moore's Fuel Service. The DOE granted the claim of the owner during the refund period, and denied the claim of the current owner, on the ground that the asset sales agreement at issue did not include the right to the refund. In addition, the DOE issued a Supplemental Order, rescinding an excessive refund that the former owner of Moore's Fuel Service had received in an earlier Gulf proceeding. As a result, the former owner, as well as his counsel in the earlier Gulf proceeding, was required to refund $7,675, an amount equal to the excessive refund received in the earlier Gulf proceeding minus the refund granted in this Decision and Order.

Gulf Oil Corporation/Red Carpet Car Wash, 6/1/95, RF300–20452

Petroleum Management, Inc. (PMI) filed an Application for Refund in the Gulf Oil Corporation (Gulf) refund proceeding, based on the purchases of three Red Carpet Car Wash locations. In considering the application, the DOE noted that it had already held, in connection with another refund application filed by PMI, that PMI did not have the right to a refund for the car washes. *See Shell Oil Co./Red Carpet Car Wash,* Case No. RF315–10003 (January 11, 1994) (unpublished decision). Specifically, the DOE noted that the agreement transferring the stock of Red Carpet Car Wash, Inc., the owner of the car washes did not reserve for PMI the right to any refund due Red Carpet. In addition, the DOE determined that PMI was not entitled to a refund for certain PMI outlets because PMI had advised the DOE that those outlets did not purchase Gulf product. Accordingly, the Application was denied.

R. Cali and Brothers, 6/1/95, RF272–97287

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Subpart V crude oil refund proceeding by R. Cali and Brothers. The decision declared June 30, 1995 as the final deadline for the crude oil refund proceeding. The DOE also stated that it would decide if there are sufficient funds available for additional refunds after the resolution of a few outstanding enforcement proceedings.

Texaco Inc./Dow Chemical Co., 6/1/95, RR321–096

The DOE issued a Decision and Order granting a Motion for Reconsideration filed on behalf of Dow Chemical Company in the Texaco Inc. special refund proceeding. The DOE had previously granted Dow a refund based upon its purchases of 1,293,189 gallons of Texaco refined products during the period covered by the Texaco consent order. DOE agreed to consider a supplemental Dow refund claim based upon Dow's additional purchase of 12,978,088 gallons of Texaco propane during the same period. Dow became aware of these purchases upon its review of DOE enforcement documents which stem from a DOE audit of Texaco's business records. In addition, Dow requested an above-volumetric refund for these volumes and presettlement interest on the amount by which it was overcharged by Texaco. DOE found that Dow satisfied the criteria for an above-volumetric refund by demonstrating that it was in all likelihood overcharged by a specific amount. Since Dow was an end-user of the Texaco propane, the firm did not have to demonstrate that it was injured by Texaco's alleged overcharges. DOE also found that Dow's claim to prejudgment interest was meritorious on equitable grounds noting that the DOE/Texaco consent order settlement amount included interest on Texaco's alleged overcharges as a major component. Dow was, therefore, granted a refund of $261,782 ($178,120 principal plus $83,662 interest).

The Waggoners Trucking Co., 5/30/95, RC272–295

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Subpart V crude oil refund proceeding by The Waggoners Trucking Co. (Waggoners). The OHA previously granted a crude oil refund to Waggoners. Waggoners, however, was subsequently found to have filed a refund claim in the Surface Transporters Stripper Well proceeding. In doing so, Waggoners properly executed a waiver and release waiving its right and the rights of its affiliates on August 7, 1986, to receive Subpart V crude oil overcharge refunds. Although Waggoners' Stripper Well refund claim was denied, its waiver is nevertheless binding on its Subpart V crude oil refund Application. Accordingly, this Decision rescinded the original refund granted to Waggoners.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	*Case No.*	*Date*
Armour Food Company	RF272–78056	05/30/95
The Dial Corporation	RC272–292	
Texas, New Mexico & Oklahoma Coaches, Inc	RC272–293	

Name	Case No.	Date
Armour & Company	RC272–294	
Atlantic Richfield Company/Gordon H. Dunker	RF304–4951	05/30/95
Atlantic Richfield Company/Massillon Supersonic Car Wash et al	RF304–14144	06/01/95
Clarkson Brothers Machinery Haulers	RF272–97192	05/30/95
Farmers Union Oil Company	RF272–92111	06/01/95
Howard County Equity Coop Assn	RF272–92392	
Farmers Coop Oil Assn	RF272–92465	
Gulf Oil Corporation/Energy Supply Propane	RF300–18181	05/30/95
Gulf Oil Corporation/Henderson Clay Products	RF300–18185	05/30/95
Gulf Oil Corporation/Point Gasoline Corporation	RF300–21828	05/30/95
Roofing Wholesale Company, Inc	RF272–67965	06/01/95
Roofing Wholesale Company, Inc	RD272–67965	
Texaco Inc./Duval Corporation	RF321–7899	05/30/95
Texaco Inc./Gartin's Texaco	RF321–20154	06/01/95
Texaco Inc./Midway Texaco	RF321–10554	05/30/95
Texaco Inc./Studebaker's Texaco et al	RF321–19313	05/30/95
Tidewater Transit Co. et al	RF272–85000	06/01/95
Turkey Hill Dairy, Inc. et al	RF272–84642	06/01/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Dolese Concrete Company	RF272–97227
Ethyl Corporation	RF321–19622
Gabig Texaco	RF321–7296
Patterson & Brasher Texaco.	RF321–20624
Shaffer's Texaco at Princeton.	RF321–9511
Shankles Texaco	RF321–18087

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system.

Dated: September 5, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 95–22761 Filed 9–12–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5295–7]

Agency Information Collection Activities Up for Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before November 13, 1995.

ADDRESSES: Indoor Air Division (6607J), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Womble, 202–233–9057/FAX 202–233–9555/womble.susan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Affected entities: Entities affected by this action are those office buildings which voluntarily participate in the Building Assessment Survey and Evaluation (BASE) program.

Title: U.S. Environmental Protection Agency Indoor Environmental Quality Survey, EPA number 1619.02, OMB #2060–0244, January 31, 1996.

Abstract: The Indoor Environmental Quality Questionnaire is a component of the EPA Building Assessment Survey and Evaluation (BASE) program. In this program, EPA is conducting a five-year indoor air quality (IAQ) study of 150–250 large commercial and public office buildings. The purpose of this study is to develop a national baseline assessment of the indoor air in such buildings. The activities EPA will conduct under this study include the Indoor Environmental Quality Questionnaire, building inspections, interviews with building maintenance workers, environmental measurements (e.g. ventilation rates, concentrations of indoor air pollutants) and other quantitative and qualitative assessments. By conducting this research, EPA will begin to be able to assess the key building parameters that affect IAQ and the incidence of certain IAQ-related health and comfort problems. The Indoor Environmental Questionnaire is a voluntary questionnaire asking for information pertaining to work station characteristics, working condition, exposure to pollutants, health and well-being, and stress. Data from the Indoor Environmental Questionnaire will be used to compare the measured building parameters and health effects.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The public reporting burden for this collection of information is estimated to average 14 minutes per response, including time for reviewing instructions and completing and reviewing the collection of information. The respondents to the questionnaire are occupants of commercial facilities in a wide variety of fields and SIC codes. Over the last three years approximately 1500 questionnaires have been administered. This is a smaller number than previously projected due to the decreased budget. The total burden of an estimated 14000 persons has not changed but the length of time to

achieve that number is greater. The estimated total annual burden of respondents is a maximum of $14,720, and the frequency of collection is once. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR Part 9.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: September 7, 1995.

Susan E. Womble,

Environmental Scientist.

[FR Doc. 95–22720 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5295–2]

Modification of the March 21, 1988, Russo Development Corporation Section 404(c) Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Modification of Clean Water Act (CWA) Section 404(c) Final Determination for Russo Development Corporation.

SUMMARY: Notice is hereby given that the U.S. Environmental Protection Agency (EPA) has modified the March 21, 1988, CWA Section 404(c) Final Determination concerning the Russo Development Corporation (Russo) site located in the Hackensack Meadowlands (Meadowlands), Bergen County, New Jersey. This modification allows Russo to seek authorization for the discharge of dredged or fill material into a 13.5-acre tract containing wetlands, provided Russo deeds over for preservation and enhancement a 16.3 acre property located in Ridgefield, New Jersey, and provides $700,000 for wetland enhancement activities at sites in the Meadowlands. Any discharges of dredged or fill material to wetlands on the Russo site must be authorized by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

EFFECTIVE DATE: The amendment was effective on September 7, 1995.

FOR FURTHER INFORMATION CONTACT: John Ettinger (EPA) at (202) 260–1190.

SUPPLEMENTARY INFORMATION: CWA Section 404(c) authorizes EPA to prohibit, deny, restrict, or withdraw the specification of a site for the disposal of dredged or fill material. On March 21, 1988, EPA's Assistant Administrator (AA) for Water rendered a final determination which prohibited the designation of 57.5 acres of wetlands as a disposal site for fill material. These wetlands were and are currently owned by the Russo Development Corporation (Russo), and are located in the Hackensack Meadowlands in Carlstadt, Bergen County, New Jersey. The Final Determination pertained to a proposal by Russo to maintain 52.5 acres of unauthorized fill (of which 44 acres have been built upon) and to fill a remaining five acres of wetlands of a 13.5-acre tract to complete a warehouse complex. The reason cited by the AA for Water for the 1988 404(c) determination was that the discharge of fill would have unacceptable adverse effects, both individually and cumulatively, on wildlife in the Meadowlands. The 1988 Final Determination stated that the Russo site was/is very valuable to wildlife from a site specific and cumulative standpoint and, that the compensatory mitigation proposed by Russo at that time would not adequately replace those wildlife values that had been and were anticipated to be lost. In the Final Determination, however, EPA indicated that its Section 404(c) prohibition could be reconsidered upon demonstration that the adverse effects to wildlife have been satisfactorily addressed.

Litigation was undertaken by Russo with regard to EPA's and the Army Corps of Engineers' (Corps) actions regarding the site. The litigation history is summarized in the notice of proposed amendment of the 404(c) determination (See 60 FR 15913).

The Corps, EPA, and Russo have engaged in discussions to resolve issues arising under Section 404 with regard to the Russo site. As a result of these discussions, Russo agreed to provide additional mitigation. Based on this additional mitigation, EPA proposed to amend the 404(c) final determination on March 28, 1995. In particular, Russo has agreed to deed over, for preservation and enhancement, an approximately 16-acre parcel of wetlands in Ridgefield, NJ, located approximately 1.5 miles from the subject Russo sites. Russo also agreed to provide $700,000 for the purpose of enhancing wetlands both at this site and at sites contained in a Hackensack Meadowlands Development Commission (HMDC) mitigation bank, as appropriate. This mitigation proposal is designed to compensate for wetlands functions lost as a result of the past and future fill activities on both Russo sites. Based on the increased mitigation, EPA proposed to amend the prohibition of the discharge of fill material on the 13.5-acre Russo site to allow for designation of the subject property as a disposal site, provided the compensatory mitigation conditions are met. After final amendment of the Final Determination, Russo would seek an after-the-fact authorization from the Corps for the past discharge of fill material into the subject wetlands for the purpose of constructing a warehouse complex, as well as authorization for the future discharge of fill material into remaining wetlands for additional development activities.

In the **Federal Register** notice proposing to amend the 404(c) prohibition, EPA requested comments on allowing for restricted use of the Russo site based on the compensatory mitigation proposal discussed above. (A more complete background on this case, as well as a detailed description of a possible compensation scenario that could be implemented under the proposed amendment can be found in the March 28, 1995, notice.) In particular, EPA was interested in comments relating to the proposed compensatory mitigation and its ability to replace the wildlife values lost as a result of past fill activities, as well as anticipated losses due to proposed discharges in the subject wetlands. EPA also mailed copies of the **Federal Register** notice to parties listed on the U.S. Army Corps of Engineers mailing list for the Hackensack Meadowlands District and to recipients of an October 14, 1987, public notice scheduling a public hearing for the Russo Section 404(c) action.

EPA received three written comments in response to the March 28, 1995, **Federal Register** notice. These comments are summarized below, along with EPA's responses to these comments.

The Pleasantville Field Office of the U.S. Fish and Wildlife Service (Service) opposed the proposed action on several grounds. The Service contended that it would adversely affect fish and wildlife resources by contributing to the continuing loss of regionally significant habitat, and would be contrary to the objective of maintaining and restoring regional biodiversity. The Service emphasized that the Meadowlands is a corridor for migratory birds, as well as a large island of habitat in an intensely urbanized area that plays a critical role in maintaining the region's biodiversity.

The Service also commented that the draft Environmental Impact Statement (DEIS) on the proposed Special Area Management Plan (SAMP) for the Hackensack Meadowlands fails to articulate specific fish and wildlife management objectives for target species

or species groups. This lack of clearly articulated management objectives, according to the Service, makes it impossible to evaluate the success of individual wetland enhancement projects or the cumulative effects of all such projects on the Hackensack Meadowlands ecosystem.

The Service also contended that the proposed compensatory mitigation is not likely to replace the wetland functions and values lost as a result of Russo's fill activity because the wetlands filled by Russo provided high value fish and wildlife habitat, while the wetlands to be enhanced are already of moderate to high value for fish and wildlife. The Service recommended that the original prohibition under Section 404(c) on the 13.5 acre parcel should remain intact.

Response: EPA agrees that the Meadowlands is a significant habitat for fish and wildlife. The desire to protect the remaining wetlands in the Meadowlands motivated EPA, the Corps, the Hackensack Meadowlands Development Commission (HMDC), the New Jersey Department of Environmental Protection (NJDEP) and the National Oceanic and Atmospheric Administration (NOAA) to join as partners to develop the SAMP, which is a 20-year plan that provides for natural resource protection, and reasonable economic growth within the Meadowlands. The proposed SAMP includes measures for the permanent protection and enhancement of about 90% of the remaining wetland acreage in the Meadowlands, along with the measures proposed for upland and wetland habitat improvement.

The DEIS is intended to be programmatic in nature, and the mitigation plan and strategies contained therein are designed to meet the program goal agreed to by the partner agencies, i.e., no net loss of wetland functions within the Meadowlands District. The targeting of a wetlands mitigation effort toward habitat enhancement for particular species or species groups is more appropriately performed at the site-specific level, on a case-by-case basis, as mitigation sites are developed and not as part of the DEIS. When a specific site is chosen to implement mitigation consistent with the proposed action, specific species or species groups could be targeted as part of the mitigation strategy. EPA will consider all comments regarding the SAMP and DEIS, including those submitted by the Service.

EPA believes, however, that the compensatory mitigation plan proposed by Russo will replace the fish and wildlife values lost as a result of the past and future fill activities. The Advanced Identification of the Hackensack Meadowlands, in which the Service was a participant, as well as additional, detailed studies performed in conjunction with the SAMP, clearly indicate that not all habitat in the Meadowlands is of moderate to high value for wildlife. If a mitigation bank site is established on a site with low habitat value, appropriate enhancement of the site would provide the requisite increase in fish and wildlife value needed to offset the loss in value due to Russo's activity. Appropriate targeting of mitigation bank sites by HMDC, in coordination with EPA, will help to ensure that this goal is achieved. Moreover, the example provided in the March 28, 1995 notice is a mitigation strategy that could offset the loss of wildlife value from Russo's activity.

The State of New Jersey Department of Environmental Protection provided comments on the proposal in the form of two letters. The first letter dated April 21, 1995, objected to the modification. However, a second letter dated June 15, 1995, expressly superseded the Department's earlier letter. In this letter, the State indicated that the proposed settlement and modification of the 404(c) prohibition would serve to satisfy all State regulatory concerns for both the Carlstadt site and the Ridgefield site, and expressed their full support for both actions.

Mr. Henry Gluckstern, a private citizen, wrote in objection to the proposed modification of the 404(c) prohibition, contending that the alternative remedial approaches outlined in the March 28 notice should be rejected as entirely inadequate and that ''nothing in the data supplied in the notice supports an actual impossibility of restoring the land to its original wetland values.'' Mr. Gluckstern opined that the proposed compensatory mitigation will not achieve true biological equivalency, and that as such, it should be rejected.

Response: The information contained in the March 28, 1995, public notice on the proposed amendment provided a detailed chronology of the history of activity on the 13.5 acre tract. For the reason explained below, EPA believes that restoration of the Russo site to its original condition with attendant wildlife values is not likely to be possible. Most of the tract was excavated, with several feet of the original organic soil and ''meadow mat'' being removed. Subsequently, approximately 8.5 acres of the tract were filled with shot rock varying in size from cobbles to boulders. Two to three acres of the remaining five acres of wetlands on this site subsequently ponded.

The loss of the original substrate, along with its seed bank, would result in a complete change in any plant community that could establish and be naturally sustained if the fill were removed. The establishment of a pond on the excavated portion of the five acre site, which was not present in the original wetlands complex, is direct evidence it would be unlikely that the original wetlands conditions could be established there naturally. In addition, the placement of several feet of rock on 8.5 acres of the site has resulted in compaction of the remnants of the original soil on that site. Evidence of this, based on excavation of the fill performed in 1990, are part of the records of this case.

Moreover, fill removal would permanently change the drainage characteristics of the soil. In addition, the elevation of the remnant original soil would be lower than its original level as a result of the compaction of the fill. As a result of these changes, along with the loss of the organic surface substrate, the conditions at the site would be very different from those that originally existed and supported the historic complex of wetland types on the site. In particular, the wet-meadow complex which existed on site is typically a ground-water fed system, and therefore very dependent on both the drainage characteristics of the substrate and the elevation of the wetland. Even if appropriate seeding/planting could take place, and organic substrate could be added to raise the elevation of the site to its original conditions, the change in the lower soils would still be likely to influence site hydrology, on which such a wetland system is dependent. Consequently, EPA has determined that the data do not support a likelihood of restoring the site to its original wetlands values.

The contention that no true biological equivalence for the wildlife values lost from the site can be established is difficult to address, because the commenter does not define how he is applying the term equivalence. Actual habitat can never be exactly replicated from one site to another, because natural sites rarely have identical (although they frequently have similar) physical, geological, and biological conditions. Likewise, the determinants of community structure are the products of a complex interaction of both existing ecological conditions and stochastic events, and thus will vary from one site to another. However, appropriate conditions to support given wildlife species or groups can be established,

particularly if the habitat requirements of the desired species or communities are broad. The term equivalence, when applied to individual species, generally refers to two different species which perform the same general ecological role in two different geographic areas. Ecologically equivalent communities, likewise, may have different species; those species, however, would be performing similar roles and the communities would have the same general community structure and dynamics, although those communities would be in two different locations. Given these assumptions, a community which is ecologically equivalent to the Russo site would be considered to be successfully established if it contains similar features and supports a similar number of species which perform the same general roles as those species which were likely to have been present on the site.

The March 28, 1995 notice described a possible combination of mitigation strategies which, if implemented, would support similar wildlife species to those which used the Russo tracts prior to Russo's activities. For example, the excavation of ponds and/or channels would provide open water habitat adjacent to a natural windbreak (i.e., *Phragmites*). This activity would provide resting and feeding habitat for waterfowl and wading birds, especially overwintering black duck, *Anas rubripes*, (a U.S. Fish & Wildlife Service species of special concern) and a species of concern in the final determination of the AA for Water. The resulting habitat would therefore be similar habitat, and would provide support for the same species that may have used the Russo tracts. Likewise, the establishment of either a wet meadow or a high salt marsh would provide hunting habitat for northern harrier, *Circus cyaneus*, and other raptors, as well as game birds such as woodcock and pheasant. Thus, these activities could establish equivalent wildlife values to those lost from the Russo tracts. Those losses have been sustained for nearly ten years, and we believe that implementation of an appropriate mitigation strategy could only benefit the Meadowlands. We therefore continue to believe that the proposal could provide good compensation for wildlife values which were lost from the Russo tracts.

It should be clarified that, under the terms of this 404(c) restriction, $700,000 would be provided by Russo to fund any appropriate mitigation at the Ridgefield parcel and any other locations selected out of the mitigation bank to be operated by HMDC. As discussed by EPA in the notice of the proposed 404(c) determination, effective mitigation could include enhancement activities at the Ridgefield site as well as other appropriate locations. The terms of the 404(c) restriction do not, however, specifically mandate how the money is to be allocated. If a mitigation plan is submitted demonstrating that greater environmental benefit would be obtained from enhancing sites other than the Ridgefield parcel, such a mitigation plan would be consistent with the 404(c) restriction. EPA will be involved in reviewing such a mitigation plan to ensure that it is appropriate taking into account the functions and values needed to compensate for the losses at the 13.5 and 44 acre sites. In addition, it is EPA's intent that, aside from incidental expenses associated with the development of an appropriate mitigation plan, the money provided by Russo to HMDC will be used for actual enhancement activities. Allocation of a portion of the funds for land acquisition, for example, would not be appropriate because it would make it difficult to achieve the degree of mitigation necessary to compensate for losses incurred at the Russo site.

Findings and Conclusions

EPA has carefully reviewed Russo's proposed compensatory mitigation offer and the comments submitted in response to the proposed amendment of the 1988 Final Determination for the CWA Section 404(c) action. Based on this review, EPA concludes that the proposed compensatory mitigation adequately addresses the adverse effects to wildlife described in the Final Determination.

As discussed above, given the extent and impact of Russo's activities on the 13.5-acre site, it is highly unlikely that suitable wetland conditions could be established on-site. Consequently, offsite mitigation is needed to compensate for the adverse effects to wildlife identified in the Final Determination.

The providing of funds to HMDC's proposed mitigation bank for enhancement activities in the Meadowlands will ensure that such mitigation is provided. As a result, a prohibition on the placement of fill material is no longer necessary to prevent unacceptable adverse effects to wildlife. EPA is instead issuing a restriction under Section 404(c) that allows specification of the Russo site as a disposal site for fill material conditional on performance of the mitigation steps specified in the modification below. EPA stated in the **Federal Register** notice proposing this amendment to its 404(c) action that this amendment be conditional on a binding agreement by Russo to perform the specified mitigation. This condition would be met through the imposition of binding conditions in a permit issued under Section 404 by the Corps specifying that Russo must perform this specified mitigation in order for discharges of fill on this site to be authorized under Section 404.

For these reasons, EPA concludes that it is appropriate to modify the original March 21, 1988, Final Determination to allow Russo to seek authorization to discharge dredged or fill material into the 13.5-acre site, provided that Russo implements the mitigation specified below (such mitigation could include the steps outlined in the proposed 404(c) amendment or an equivalent mitigation plan). Any discharge activities to waters of the U.S. must be authorized pursuant to applicable permits issued by the Corps under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

Modification

The March 21, 1988, Clean Water Act Section 404(c) Final Determination for the Russo Development Corporation Site is hereby modified as follows:

The prohibition imposed in the March 21, 1988, Final Determination is removed and a restriction is imposed upon specification of the site for the disposal of dredged or fill material. Under this restriction, the Russo Development Corporation may seek authorization from the U.S. Army Corps of Engineers for discharges of dredged or fill material into waters of the United States within the area previously prohibited by EPA, provided the terms of the authorization require Russo to (1) deed over for preservation and any appropriate enhancements, an approximately 16.3 acre parcel of wetlands located in Ridgefield, New Jersey; and, (2) provide funding in the amount of $700,000 for the purpose of enhancing wetlands in the Hackensack Meadowlands.

Dated: September 7, 1995.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 95–22724 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5295–6]

Deadline Extension for Submitting Environmental Education Grant Proposals to EPA

The proposal submission deadline for the ''Environmental Protection Agency,

Fiscal Year 1996 Environmental Education Grants Program, Solicitation Notice,'' is extended from October 13, 1995 to December 15, 1995. The original deadline was published in the **Federal Register,** August 4, 1995 at 60 FR 39994/Notices Section.

Due to possible funding delays at the Federal level for fiscal year 1996, EPA is extending the deadline. This will enable grant applicants to spend more time preparing proposals and will give EPA time to fully determine what the changes, if any, are to its fiscal year budget. This postponement may also delay the EPA awards process until the summer of 1996. Therefore, proposed projects should have an expected start date on or after October 1, 1996, and summer projects may be planned for the summer of 1997. EPA regrets any inconvenience these delays may create for grant applicants.

EPA has been very pleased with the quality of proposals received over the past four years and looks forward to receiving new proposals for 1996. If organizations have submitted a proposal in the past and wish to re-apply, they should observe the changes in the Solicitation Notice regarding EPA priorities for funding. For a copy of the Solicitation Notice, please mail requests to: U.S. Environmental Protection Agency, Environmental Education Grants Program (1707), 401 M Street SW., Washington, DC 20460.

Dated: August 30, 1995.

Michael Baker,

Acting Director, Environmental Education Division.

[FR Doc. 95–22721 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–P

[OPP–34082; FRL 4975–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on December 12, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.James.epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 16 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before December 12, 1995 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Delete From Label
000004–00099	Malathion 50% EC (Malathion)	Indoor use in homes, buildings, dairy barns, hog barns, poultry houses, calf pens, dogs, cats, kennels, pens, stored grain, field & garden seeds, transport containers for bagged flour & packaged cereals
000352–00317	Sinbar Herbicide (Terbacil)	Pecans
000352–00341	Manzate 200 Fungicide (Mancozeb)	Non-agricultural turf & lawn grass uses
000352–00354	Benlate Fungicide (Benomyl)	Turf & lawn grass uses
000352–00377	Benomyl Technical (Benomyl)	Turf & lawn grass uses
000352–00385	Benlate OD Fungicide (Benomyl)	Turf & lawn grass uses
000352–00395	Krenite Brush Control (Fosamine Ammonium)	Ditchbank uses
000352–00396	Benlate DF Fungicide (Benomyl)	Turf & lawn grass uses
000352–00398	Manzate 200 Flowable Fungicide (Mancozeb)	Non-agricultural turf & lawn grass uses
000352–00447	Benlate 50 DF Fungicide (Benomyl)	Turf & lawn grass uses
000352–00449	Manzate 200 DF Fungicide (Mancozeb)	Non-agricultural turf & lawn grass uses
000352–00564	Benlate SP Fungicide (Benomyl)	Turf & lawn grass uses

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Delete From Label
000655–00777	Prentox 5 LB. Malathion (Malathion)	Apples, pears, quince, almonds, asparagus, carrots, filbert, peanuts, pineapples, plums, prunes, safflower, soybeans, sugar beets, tobacco, radish, watercress, forest trees (including deciduous forest & shade trees, eastern pine, pines, red pine, stored commodity treatment for almonds, field or grass garden seeds, peanuts, rice, sorghum, bagged citrus pulp, cattle feed concentrate blocks (non- medicated), pet & domestic animal uses for beef cattle, cats, chickens, dairy cattle (lactating and non-lactating), dogs, ducks, geese, goats, hogs, horses (including ponies), sheep, turkeys, animal premise uses for poultry houses, cat & dog sleeping quarters, poultry houses, household uses for indoor domestic dwellings, matteresses, commercial and industrial uses for bagged flour, cereal processing plants, edible & inedible commercial establishments, edible & inedible food processing plants, packaged cereals, pet food & feed stuff, warehouses to control khapra beetles
002217–00628	Methoxychlor 75 Dust Base (Methoxychlor)	Ornamental lawns, recreational areas, urben & rural areas, agricultural premise use for barns (including dairy barns), milk rooms, pens, sheds, stalls, poultry houses, stables, feed rooms & manure piles, kennels, dog & cat sleeping quarters, commercial & industrial use for food processing plants (edible & inedible), food processing storage areas (including cereal processing mills, cereal storage areas & flour mills), mausoleums, mushroom house and equipment treatment, transportation vehicles, empty peanut warehouses
008329–00018	Mosquitomist Two ULV (Chlorpyrifos)	Mosquito larvicide uses
051036–00105	Ametryne 4FL (Ametryne)	Potatoes, citrus use

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000004	Bonide Products, Inc., 2 Wurz Ave., Yorkville, NY 13495.
000352	E.I. duPont de Nemours & Co., Registration & Regulatory Affairs, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880.
000655	Prentiss Incorporated, C.B. 2000, Floral Park, NY 11002.
002217	PBI/Gordon Corp., 1217 W. 12th St., P.O. Box 4090, Kansas City, MO 64101.
008329	Clarke Mosquito Control Products, Inc., 159 N. Garden Ave., Roselle, IL 60172.
051036	Micro Flo Company, P.O. 5948, Lakeland, FL 33807.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 28, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–22492 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66217; FRL 4975–5]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 12, 1995, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish

a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent To Cancel

This Notice announces receipt by the Agency of requests to cancel some 35 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

Table 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00646	Subdue 5G Fungicide	N-(2,6-DimethylphenylN-(methoxyacetyl)alanine, methyl ester
000100–00672	Apron T-69 Fungicide	2-(4'-Thiazolyl)benzimidazole *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 CA–87–0007	Apron T-69 SD	2-(4'-Thiazolyl)benzimidazole *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ID–86–0019	Apron T-69 SD	2-(4'-Thiazolyl)benzimidazole *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ME–92–0002	Ridomil MZ 58 Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 NC–90–0004	Subdue Granular Fungicide	*N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 ND–92–0002	Ridomil MZ 58 Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000100 WA–86–0028	Apron T-69 SD	2-(4'-Thiazolyl)benzimidazole *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000224–00029	Phillips Fuel Additive 55 MB-E	2-Methoxyethanol
000352–00270	Dupont Lorox Weed Killer WP	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000352–00391	Dupont Lorox L Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000352–00451	Dupont Lorox Plus Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000352–00543	New Lorox Plus Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000352–00544	Dupont Gemini Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000352–00562	Dupont Lorox SP Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
000352–00568	Du Pont Synchrony STS	Methyl 3-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl) 2-(((((4-Chloro-6-methoxy-2-pyrimidinyl)amino)carbonyl)amino)sulfonyl)benzoic acid,
000748–00212	Hi Flo Prist	2-Methoxyethanol
000748–00213	Lo-Flo Prist Anti-Icing and Biocidal Fuel Additive	2-Methoxyethanol
000748–00215	Prist Anti-Icing & Microbiocidal Aviation FuelAdditive	2-Methoxyethanol
001769–00063	Flair Aerosal Air Sanitizer and Deodorant	1,2-Propanediol
001769–00251	Ornathal Lawn and Ornamental Fungicide	Tetrachloroisophthalonitrile
001812 WI–94–0004	Linex 50 DF	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
003125 SD–91–0002	Sencor DF 75% Dry Flowable Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
003125 SD–92–0003	Sencor Solupak Herbicide	1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-
004524–00027	Monarch C-S	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14},30%C_{16}, 5%C_{18}, 5%C_{12}) Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14}) Phosphoric acid
005185–00146	Bio-Guard Chlorinated Stabilizer 40–10	Sodium dichloro-*s*-triazinetrione
005464–00006	Shock Repellent	Capsaicin (in oleoresin of capsicum)
007056–00149	CSA Screwworm Spray	Dipropyl isocinchomeronate *O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate

Table 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
007234–00076	Buckshot 10-PH	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
010182–00134	Prelude E W Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride 2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-4-methylphenyl)acetamid
010807–00015	Knight Insect Guard	Bioresmethrin
034704 WA–82–0045	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
034704 WA–85–0030	Dimethogon 25% Wettable Powder Systemic Insecticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
034704 WI–87–0003	Clean Crop Phorate 20G	*O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
034913–00009	Sprakil S-3 Granular Weed Killer	*N*-(5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N*'-dimethylurea

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000224	Phillips 66 Co., 699 Adams Building, Bartlesville, OK 74004.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000748	PPG Industries, Inc., Product Safety, One PPG Place - 36 W., Pittsburgh, PA 15272.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
001812	Griffin Corp., Box 1847, Valdosta, GA 31603.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004524	H.B. Fuller Co., 3900 Jackson St., N.E., Minneapolis, MN 55421.
005185	Bio-Labs Inc., Box 1489, Decatur, GA 30031.
005464	Xttrium Labs Inc., 415 W. Pershing Rd., Chicago, IL 60609.
007056	IQ Products Co., Attn: Marty York, 16212 State Hwy 249, Houston, TX 77086.
007234	Forshaw Chemical Co., 650 State Street, Charlotte, NC 28208.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
010807	Amrep, Inc., 990 Industrial Dr., Marietta, GA 30062.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
034913	SSI Mobley Co., Inc., c/o Landis International Inc., Box 5126, Valdosta, GA 31603.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3.—ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
109–86–4	Methoxyethanol	000224 000748

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 12, 1995. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 28, 1995.

Frank Sanders,

Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 95–22493 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30370A; FRL–4974–9]

Safe and Sure Products; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product De-Flea Shampoo Concentrate, containing active ingredients not included in any currently registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Keigwin, Product Manager (PM) 10, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 210, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–6788; e-mail: keigwin.richard@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 24, 1994 (59 FR 43577), which announced that Safe and Sure Products Company, P.O. Box 5547, Sarasota, FL 34277, had submitted an application to register the pesticide product De-Flea Shampoo Concentrate an insecticide (EPA File Symbol 45729–E), containing the active ingredients docusate sodium sulfosuccinate (hereafter referred to as dioctyl sodium sulfosuccinate) and undecylenic acid at 12 and 2 percent respectively, active ingredients not included in any currently registered product.

The application was approved on August 8, 1995, as De-Flea Shampoo Concentrate for use to control fleas, ticks, and lice on dogs, cats and other nursing animals (EPA Registration Number 45729–2).

The Agency has considered all required data on risks associated with the proposed use of dioctyl sodium sulfosuccinate and undecylenic acid, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of dioctyl sodium sulfosuccinate and undecylenic acid when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 25, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22733 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30393; FRL–4972–1]

Zeneca Ag Products; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 13, 1995.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30393] and the file symbol (10182–UNI) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an

ASCII file avoiding the use of special characters and any form of encryption. Comments and data will be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30393]. No ''Confidential Business Information'' (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submission can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Theresa A. Stowe, Acting Team Leader, Product Manager (PM) Team 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 229, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703) 305–5540; e-mail: stowe.theresa@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE 19897, to register the pesticide product ICIA5504 50WG Fungicide (EPA File Symbol 10182–UNI), containing the active ingredient (methyl (*E*)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate at 50 percent, an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. This product is for use to control certain diseases of grapes and turf. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

A record has been established for this notice under docket number [OPP–30393] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division at the address provided from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 28, 1995.

Stephen L. Johnson

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22732 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180980; FRL 4975–1]

Pirate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued specific exemptions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, to Alabama Department of Agriculture and Industries, Arkansas State Plant Board, Louisiana Department of Agriculture and Forestry, and the Mississippi Department of Agriculture and Commerce (hereafter referred to as the ''Applicants'') for use of the pesticide, Pirate to control tobacco budworms in up to 2,000,000 acres in the south eastern cotton belt region. Due to the unique nature of these emergency situations, in which the time to review the conditions of these situations was short, it was not possible to issue a solicitation for public comment, in accordance with 40 CFR 166.24, prior to the Agency's decision to grant these exemption. However, comments may still be submitted and will be evaluated regarding the continuation of these exemptions.

DATES: Comments must be received on or before September 28, 1995.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–180980,'' should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form

must be identified by the docket number [OPP–180980]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain (CBI) must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA, if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for use of the insecticide Pirate, available as Pirate 3SC from American Cyanamid Company, to control tobacco budworms on up to 2,000,000 acres within the south eastern cotton belt region. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicants, excessive economic losses will occur if Pirate is not granted for use on cotton to control the tobacco budworm (TBW) in these regions. The Applicants claim that there are no other alternative pesticides to control this pest due to pyrethroid resistance.

Under the uses requested and/or authorized in these specific exemptions, Pirate was requested, a maximum of 4 applications of Pirate may be applied at the rate of [0.2 to 0.35 lb active ingredient (ai/A)] (8.53 to 14.93 fl. oz. of product) per acre using ground or aerial equipment, in a minimum of 10 gallons per acre total volume by ground or 5 gallons of spray solution per acre by air. A 5 to 7 day application interval, and a 21-day preharvest interval must be observed. The granted specific exemptions expire September 30, 1995.

The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)]. Pirate is an unregistered (new) chemical. In the case of these states', and the situation found in their cotton producing areas, there was not adequate time to publish a notice of receipt and solicit public comments on these applications prior to the Agency reviewing the submitted data, and making and issuing its decisions. Therefore, as allowed for by 40 CFR 166.24(c), the comment period following a notice of receipt was eliminated, since the time available to make a decision required this.

A record has been established for this notice under docket number ''OPP–180980'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Interested persons are still invited to submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received regarding continuance of these emergency exemptions for the use of Pirate on cotton.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: August 25, 1995.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22494 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–F

[PF–633; FRL–4975–3]

DuPont Co. and Monsanto Co.; Notice of Filings of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA announces that it has received various pesticide petitions and food/feed additive petitions from the DuPont Co. and the Monsanto Co. proposing the establishment and/or amendment of pesticide tolerances in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-633]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6800; e-mail: taylor.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This notice announces that EPA has received various notices of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petitions (PP) and food/feed additive petitions (FAP) to amend 40 CFR parts 180, 185, and 186 to establish tolerances for various pesticides in or various commodities as described below. The Monsanto Co. (Monsanto), 700 14th St., NW., Suite 1100, Wasington, DC 20005, and the E.I. DuPont de Nemours & Co. (DuPont), Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, submitted the petitions described herein.

Initial Filings

1. *PP 5F4555*. Monsanto proposes that 40 CFR 180.364 be amended by establishing a regulation to permit residues of glyphoste [*N*-(phosphonomethyl)glycine] resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the raw agricultural commodity corn forage at 1.0 part per million (ppm). The analytical methods are HPLC with a fluorometric detector and GC/MS.

2. *PP 5F4565*. DuPont proposes that 40 CFR part 180 be amended by establishing a regulation to permit the combined residues of the herbicide terbacil (3-tert-butyl-5-chloro-6-methyluracil) and its hydroxylated metabolites, 3-tert-butyl-5-chloro-6-hydroxymethyluracil, 6-chloro-2,3-dihydro-7-hydroxymethyl-3,3-dimethyl-5H-oxazolo (3,2a) pyrimindim-5-one, and 6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo (3,2a)pyrimidin-5-one (calculated as terbacil) in or on alfalfa, forage at 1 ppm and alfalfa, hay at 1 ppm.

3. *PP 6F3408*. Monsanto proposes that 40 CFR 180.364 be amended by proposing a regualtion to permit the combined residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid in or on the raw agricultural commodity sunflowers at 0.1 ppm. The analytical method is HPLC.

Amended Filings

4. *PP 3F4268*. In the **Federal Register** of August 17, 1995 (60 FR 42884), EPA issued a notice that DuPont proposed that 40 CFR part 180 be amended by establishing a regulation to permit residues fo the herbicide quizalofop-p-ethyl ester (ethyl, R-2-(4-(6-chloro-quinoxalin-2-yl)oxy)phenoxy)propanoic acid) and the S-enantiomers of the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the legume vegetable (succulent and dried) group at 0.3 ppm; foilage of legume vegetables (except soybeans and bean hay) at 0.7 ppm; sugar beet root at 0.1 ppm; sugar beet top at 0.5 ppm; and cottonseed at 0.1 ppm. Dupont is amending the petition by proposing a regulation to permit the combined residues of the herbicide quizalofop-p-ethyl ester and its acid metabolite, quizalofop-p-[R-(4-((6-chloro-quinoxalin-2-yl)oxy)phenoxy)propanoic acid), and the S enantiomers of the ester and the acid all expresed as quizalofop-p-ethyl ester in or on the following raw agricultural commodities (RACs): cotton seed at 0.1 ppm; legume vegetable (succulent or dried) group at 0.3 ppm; foliage of legume vegetable (except soybeans and bean hay) at 0.7 ppm; sugar beet root at 0.1 ppm; and sugar beet top at 0.5 ppm. (PM-25).

5. *PP 4F4312*. In the **Federal Register** of July 13, 1994 (59 FR 35718), EPA issued a notice that Monsanto proposed that 40 CFR 180.463 be amended by establishing a regulation to permit the combined residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid (AMPA) resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on alfalfa, hay at 200 ppm and alfalfa, forage at 75 ppm. Monsanto is amending the petition by proposing to remove the metabolite AMPA from the expression and to amend 40 CFR 180.364 by establishing a regulation to permit residues of glyphosate resulting from the application of the isopropylamine and/or monoammonium salt of glyphosate for herbicidal and plant growth regulator purposes and/or the sodium sesqui salt of glyphosate for growth regulator purposes in or on the kidney of cattle, goats, hogs, sheep, and horses at 4.0 ppm.

6. *PP 4F4338*. In the **Federal Register** of November 2, 1994 (59 FR 54907), EPA issued a notice that Monsanto proposed that 40 CFR 180.364 be amended by establishing a regulation to permit the combined residues of glyphosate and its metabolite aminomethylphosphonic acid (AMPA), resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on citrus fruits at 0.5 ppm. Monsanto is amending the petition by proposing to remove the metabolite AMPA from the expression.

7. *PP 4F4369*. In the **Federal Register** of February 8, 1995 (60 FR 7540), EPA issued a notice that Monsanto proposed that 40 CFR 180.364 be amended by establishing a regulation to permit the combined residues of glyphosate [N-(phosphonomethyl)glycine in or on soybean forage at 100 ppm, resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate. Monsanto is amending the petition by proposing that 40 CFR 180.364 be amended by establishing a regulation to permit residues of glyphosate resulting from the application of the isopropylamine salt of glyphosate in or on the raw agricultural commodities (RACs) soybean grain at 20 ppm, soybean forage at 100 ppm, soybean hay at 200 ppm, and soybean, aspirated grain fractions at 50 ppm. These tolerances are to replace the existing tolerances for soybeans, soybean forage, soybean hay, and soybean straw.

8. *PP 4F4405*. In the **Federal Register** of February 8, 1995 (60 FR 7540), EPA issued a notice that DuPont proposed that 40 CFR part 180 be amended to establish a regulation to permit residues of the herbicide nicosulfuron (3-pyridinecarboxamide, 2-(((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)aminosulfonyl)-N,N-dimethyl) in or on sweet corn (kernals plus cobs with husks removed) and corn, sweet, forage at 0.1 ppm. DuPont is amending the petition to propose the establishment of a regulation to permit residues of nicosulfuron in or on corn, sweet (kernals plus cobs with husks

removed); corn, sweet, forage; and corn, sweet, fodder (stover at 0.1 ppm).

9. *PP 8F2128*. In the **Federal Register** of November 7, 1978 (43 FR 53816), EPA issued a notice that Monsanto proposed to amend 40 CFR 180.314 by establishing a tolerance for residues of the herbicide triallate (S-(2,3,3-trichloroallyl) diisopropylthiocarbamate) in or on the raw agricultural commodities sugarbeets, sugarbeet tops, soybeans, soybean forage and hay all at 0.05 ppm. Monsanto is amending the petition to propose that tolerances with regional registration be established for residues of triallate and its metabolite 2,3,3-trichloro-2-propene sulfonic acid and expressed as parent equivalent in/on the raw agricultural commodities sugarbeet roots at 0.05 ppm and sugarbeet foliage at 0.5 ppm.

10. *PP 8F3673*. In the **Federal Register** of October 12, 1988 (53 FR 39785), EPA issued a notice that Monsanto Co. proposed that 40 CFR 180.364 be amended by establishing a regulation to permit residues of the herbicide glyphosate in or on corn grain at 1.0 ppm, corn fodder at 20 ppm, and corn forage at 20 ppm. Monsanto is amending the petition by proposing to establish a regulation permitting residues of glyphosate resulting from the the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on corn grain at 1.0 ppm, corn fodder (stover) at 100 ppm, and corn, aspirated grain fractions at 200 ppm. Also proposed is the establishement of tolerances for residues of glyphosate resulting from the application of the isopropylamine salt and/or glyphosate monoammonium salt for herbicidal and plant growth regulator purposes and/or the sodium sesqui salt for growth regulator purposes in or on liver and kidney of cattle, goats, hogs, horses, and sheep and the liver and kidney of poultry at 1.0 ppm.

11. *FAP 4H5701*. In the **Federal Register** of March 15, 1995 (60 FR 13979), EPA issued a notice that Monsanto had submitted an FAP to EPA that proposed amending 40 CFR 186.3500 to establish a regulation permitting residues of the herbicide glyphosate resulting from the application of the isopropylamine salt and/or the monoammonium salt of glyphosate in or on the feed commodity aspirated grain fractions at 30 ppm. Monsanto is amending the petition by deleting the feed commodity soybeans, aspirated grain fractions at 30 ppm from this expression and reproposing it as a raw agricultural commodity under PP No. 4F4369 (Refer to amended filing notice for 4F4369 elsewhere in this document). Monsanto is also proposing that a feed additive regulation be established permitting residues of glyphosate resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the feed commodity soybean hulls at 100 ppm. This entry would replace the current entry for soybean hulls.

12. *FAP 4H5705*. In the **Federal Register** of November 2, 1994 (59 FR 54907), EPA issued a notice that Monsanto Co. proposed that 40 CFR 185.3500 be amended by establishing a feed additive regulation to permit residues of glyphosate and its metabolite aminomethylphosphonic acid in or on citus pulp, dried at 1.0 ppm. Monsanto is amending the petition by proposing that 40 CFR part 186 be amended by establishing a regulation to permit residues of glyphoaste in or on the feed commodity citrus pulp, dried at 1.5 ppm.

13. *FAP 5H5720*. In the **Federal Register** of August 17, 1995 (60 FR 42885), EPA issued a notice that DuPont proposed that 40 CFR part 186 be amended by establishing a regulation to permit residues of the herbicide quizalofop-p-ethyl ester and the S-enantiomers of the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the animal feed sugar beet molasses at 0.2 ppm. DuPont is amending the petition by proposing that 40 CFR part 186 be amended by establishing a regulation to permit the combined residues of the herbicide quizalofop-p-ethyl ester and its acid metabolite quizalofop-p-(R-(2-(4-(6-chloroquinoxalin-2-yl)oxy)phenoxy)propanoic acid and the S-enantiomers of the ester and the acid, all expressed as quizalofop-p-ethyl ester, in or on the feed commodity sugar beet molasses at 0.5 ppm.

A record has been established for this rulemaking under docket number [PF-633] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 21 U.S.C. 346a and 348.

Dated: August 22, 1995.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 95–22870 Filed 9–11–95; 12:03 pm]

BILLING CODE 6560–50–F

[FRL–5295–4]

Jack's Creek/Sitkin Smelting Superfund Site De Micromis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

AGENCY: Environmental Protection Agency.

ACTION: Request for Public Comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de micromis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. § 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of Gould Electronics, Inc. (''Gould'') and Texas Instruments Incorporated (''TI''), for response costs incurred by the United States Environmental Protection Agency at the Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania.

DATES: Comments must be provided on or before October 13, 1995.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: Jack's Creek/Sitkin Smelting Superfund Site, Maitland County, Pennsylvania, U.S. EPA Docket Nos. III–95–35–DC and III–95–36–DC.

FOR ADDITIONAL INFORMATION CONTACT: Daniel Isales (215) 597–4774, or Pamela Lazos (215) 597–8504, United States Environmental Protection Agency, Office of Regional Counsel, (3RC22), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107.

Notice of De Micromis Settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. § 9622(i)(1), and Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. § 6973(d), notice is hereby given of a proposed administrative settlement concerning the Jack's Creek/Sitkin Smelting Superfund Site in Maitland County, Pennsylvania. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on June 30, 1995 and is subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for damages to natural resources, is also subject to agreement in writing by the Department of the Interior (''DOI'').

The settling parties collectively agreed to pay $1,695.12 to the United States Environmental Protection Agency toward EPA response costs and $61 to DOI for damages to natural resources, subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. §§ 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), authorizes early settlements with *de micromis* parties to allow them to resolve their liabilities under, inter alia, Section 107 of CERCLA, 42 U.S.C. § 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. The grant of a covenant not to sue for damages to natural resources by DOI to those parties paying their share of such allocated costs is subject to agreement in writing by DOI pursuant to Section 122(j) of CERCLA, 42 U.S.C. § 9622(j).

The Environmental Protection Agency will receive written comments upon this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. Moreover, pursuant to Section 7003(d) of the Solid Waste Disposal Act, 42 U.S.C. § 6973(d), the public may request a meeting in the affected area. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Daniel Isales at (215) 597–4774 or Pamela Lazos at (215) 597–8504. The Administrative Record in support of the proposed Order is also available for review.

W. Michael McCabe,

Regional Administrator, EPA Region III.

[FR Doc. 95–22722 Filed 9–12–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Technology Subcommittee of the Public Safety Wireless Advisory Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Technology Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Technology Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Thursday, September 28, 1995; 9 a.m. to 12 p.m.

ADDRESSES: Postal Square Museum Building; 2 Massachusetts Avenue, N.E.; Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Technology Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 18, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at dbehlin@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22819 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–M

Spectrum Requirements Subcommittee of the Public Safety Wireless Advisory Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Spectrum Requirements Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report

to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Spectrum Requirements Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Friday, September 29, 1995; 1:00 p.m. to 4:00 p.m.

ADDRESSES: Postal Square Museum Building; 2 Massachusetts Avenue, N.E.; Washington, D.C 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Spectrum Requirements Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 19, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at dbehlin@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22820 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–M

Operational Requirements Subcommittee of the Public Safety Wireless Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Operational Requirements Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Operational Requirements Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Friday, September 29, 1995; 9:00 a.m. to 12:00 p.m.

ADDRESSES: Postal Square Museum Building; 2 Massachusetts Avenue, N.E.; Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Operational Requirements Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 19, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at dbehlin@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22821 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–M

Interoperability Subcommittee of the Public Safety Wireless Advisory Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Interoperability Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Interoperability Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Thursday, September 28, 1995; 4:30 p.m. to 7:30 p.m.

ADDRESSES: Postal Square Museum Building; 2 Massachusetts Avenue, N.E.; Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Interoperability Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 18, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at debehlin®fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22822 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–M

Transition Subcommittee of the Public Safety Wireless Advisory Committee; Meeting

AGENCIES: The National Telecommunications and Information Administration (NTIA), Larry Irving, Assistant Secretary for Communications and Information, and the Federal Communications Commission (FCC), Reed E. Hundt, Chairman.

ACTION: Notice of the First Meeting of the Transition Subcommittee of the Public Safety Wireless Advisory Committee.

SUMMARY: The NTIA and the FCC established a Public Safety Wireless Advisory Committee and Subcommittees to prepare a final report to advise the NTIA and the FCC on operational, technical and spectrum requirements of Federal, state and local Public Safety entities through the year 2010. The establishment of the committee is in the public interest. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the meeting of the Transition Subcommittee of the Public Safety Wireless Advisory Committee.

DATES: Thursday, September 28, 1995; 1:00 p.m. to 4:00 p.m.

ADDRESSES: Postal Square Museum Building, 2 Massachusetts Avenue; N.E., Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Administrative Matters
4. Work Program/Organization of Work
5. Meeting Schedule
6. Agenda for Next Meeting
7. Other Business
8. Closing Remarks

The Transition Subcommittee will have an open membership. All interested parties are invited to attend and to participate in the First Meeting of this Subcommittee. This policy will ensure balanced participation. To attend the Subcommittee meeting, please RSVP to Deborah Richardson-Behlin of the Wireless Telecommunications Bureau of the FCC on or before September 18, 1995, by calling (202) 418–0650, faxing (202) 418–2643, or replying by E-mail at dbehlin@fcc.gov. Please provide your name, the organization you represent, your phone number and fax number when you RSVP. This RSVP is for the purpose of determining the number of people who will attend the Subcommittee meeting.

FOR FURTHER INFORMATION CONTACT: William Donald Speights, NTIA (202–482–1652), or John J. Borkowski, FCC (202–418–0680), Co-Designated Federal Officers of the Public Safety Wireless Advisory Committee. You may also obtain more information from the Internet at the Public Safety Wireless Advisory Committee homepage (http://pswac.ntia.doc.gov.).

Federal Communications Commission.

Robert H. McNamara,

Chief, Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 95–22823 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 80–286; DA–95–1927]

Letter to Telephone Exchange Service Providers Giving Notice of Proposed Release of Data Submitted by Providers

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In response to several requests, the Common Carrier Bureau (Bureau) of the Federal Communications Commission (Commission) intends to release a compiled database comprising non-confidential subscriber and financial information submitted by local exchange carriers (LECs) is response to an Order, released December 1, 1994. The individual non-confidential responses of the LECs have already been released to the public. To guard against the possibility that LEC information previously claimed to be confidential is included in the database to be released, the Bureau is taking two steps. As described more fully below in a letter from Kenneth P. Moran, Chief of the Bureau's Accounting and Audits Division, the Bureau, first, is excluding from the database to be released a limited number of data fields that a large number of LECs claimed to contain confidential information. Second, the Bureau is requesting LECs that have previously claimed fields confidential in addition to those generally being excluded from the database to reassert those claims not later than September 25, 1995. Failure to reassert such claims will be deemed to constitute waiver of objection to release of such information designated confidential solely to the extent that such information claimed confidential is included in the non-confidential database to be released.

ADDRESSES: Responses should be directed to the Federal Communications Commission, Common Carrier Bureau, Accounting and Audits Division, Box 10, 1919 M St., N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Senior Attorney, and George Johnson, Senior Attorney, Accounting and Audits Division, Common Carrier Bureau (202) 418–0850.

SUPPLEMENTARY INFORMATION:

September 11, 1995.

Release Date: September 11, 1995.

Dear Telephone Exchange Service Provider:

On July 13, 1995, the Federal Communications Commission (Commission) released a Notice of Proposed Rulemaking and Notice of Inquiry, proposing changes to the Commission rules relating to the Universal Service Fund (USF) and Dial Equipment Minute (DEM) Weighting. Also, on December 1, 1994, the Commission released an Order directing local exchange carriers (LECs) to submit certain information to assist in evaluation of current USF and DEM Weighting assistance mechanisms and to estimate the effects of possible rules changes on both telecommunications providers and subscribers.

Although individual LEC submissions in response to the December 1, 1994 Order have been available from the Commission for several months, the National Association of Regulatory Utilities Commissioners as well as LEC representatives have requested that the

Commission release a database that compiles the individual LEC submissions. The Common Carrier Bureau (Bureau), working with the Federal-State Joint Board staff, has compiled the individual LEC responses containing information not claimed to be confidential into a database. In response to the foregoing requests, the Bureau intends to release this database of non-confidential information. While we hope this database will help commenters analyze those proposals in the July 13, 1995, Notice of Proposed Rulemaking and Notice of Inquiry that lend themselves to quantitative analysis, we remind you that comments need not be, and our consideration will not be, limited to the data contained in that database.

Great care has been taken to assure that the information in the database to be released does not contain data fields subject to confidentiality claims. Notwithstanding these efforts, and to protect against the possibility that some information claimed to be confidential has inadvertently been included in the database, the Bureau is taking the following measures.

First, analysis of the claims of confidentiality indicates that most of the confidentiality claims were made in a limited number of specific data fields. To accommodate these claims, we shall exclude the following fields (in File 1/filename ''DATAREQ'', and File 3/filename ''ZIPCODES'', respectively) from the forthcoming database:

1. Distribution of billings by dollar amounts (File 1, Fields 69–94 and 137–156).
2. Number of subscriber lines billed for specific interexchange carriers (File 1, Fields 123–130).
3. Information relating to cable TV, cellular and other services (File 1, Fields 335–373).
4. Identity of wire center common language location identifier, the number of subscriber lines served by each wire center, the post office zip code at the location of the wire center, and the zip codes served by specific wire centers (File 3, cols. A–D.).

You need not respond to this letter to have data you submitted in the fields listed above withheld from the database. Withholding this information from the database is intended to accommodate most carriers' concerns about proprietary information and does not constitute a ruling on the requests for proprietary treatment.

Second, if you have requested that the Commission accord other specific information confidential treatment, you may at this time file a statement identifying those other fields in your response to the data request for which you claimed confidential treatment, and a statement that you continue to assert such claims. If such statements are timely received, the fields of information will be excluded from the database to be released. Failure to provide such statements on or before September 25, 1995, will be deemed to constitute waiver of objection to release of the LEC's information designated confidential solely to the extent that such confidential information has been included in the database to be released. Requests that information not previously designated confidential or proprietary now be so designated, will not be considered.

Statements seeking continued confidential treatment of data must be received by the Commission not later than September 25, 1995. To ensure that we receive your response without delay, we have assigned a special mail box for replies to this letter. Therefore, to be considered, your response must be addressed to:

Federal Communications Commission, Common Carrier Bureau, Accounting and Audits Division, Box 10, 1919 M Street, N.W., Washington, DC 20554

Inquires should be directed to either Deborah Dupont, Senior Attorney, or George Johnson, Senior Attorney, Accounting and Audits Division, at 202–418–0850.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22904 Filed 9–12–95; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1065–DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1065–DR), dated August 25, 1995, and related determinations.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio dated August 25, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 25, 1995:

The counties of Erie and Lorain for Individual Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–22727 Filed 9–12–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1065–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1065–DR), dated August 25, 1995, and related determinations.

EFFECTIVE DATE: August 25, 1995.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 25, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms and flooding on August 7 through August 18, 1995, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Public Assistance may be added at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and/or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Champaign, Licking, Logan, Marion, Mercer, Miami, Scioto, and Shelby Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–22728 Filed 9–12–95; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1066–DR]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1066–DR), dated September 1, 1995, and related determinations.

EFFECTIVE DATE: September 1, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 1995, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from tornadoes, severe storms and flooding beginning on July 21 through and including August 6, 1995 is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter L. Smith of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

The counties of Alfalfa, Blaine, Caddo, Cotton, Custer, Grant, Jackson, Kay, Major, Oklahoma, Tillman, Washita and Woods for Public Assistance and Hazard Mitigation Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–22729 Filed 9–12–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011223–011

Title: Transpacific Stabilization Agreement

Parties:

A.P. Moller-Maersk Line
American President Lines, Ltd.
Evergreen Marine Corp. (Taiwan) Ltd.
Hapag-Lloyd Aktiengesellschaft
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nedlloy Lines B.V.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Yangming Marine Transport Corp.

Synopsis: The amendment suspends for an indefinite period the Agreement's Capacity Management Program (''CMP''). The suspension of the CMP will apply to the Agreement's current quarterly accounting period, as well as subsequent accounting periods.

Agreement No.: 232–011491–001

Title: Lykes/Evergreen Reciprocal Space Charter, Sailing and Cooperative Working Agreement

Parties:

Lykes Bros. Steamship Co., Inc.
Evergreen Marine Corp. (Taiwan) Ltd.

Synopsis: The proposed amendment adds a new Article 9.2(a)(7) to clarify the amount of notice required for termination in the event one of the parties withdraws a vessel or reduces its tonnage in the trade without the consent of the other party. It also makes other non-substantive changes to the Agreement.

Dated: September 7, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–22639 Filed 9–12–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

FSB Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 6, 1995.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. FSB Corp., Sublette, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank of Sublette, Sublette, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Area Bancshares Corporation, Owensboro, Kentucky; to acquire 100 percent of the voting shares of Citizens Deposit Bancshares, Incorporated, Calhoun, Kentucky, and thereby indirectly acquire Citizens Deposit Bank, Calhoun, Kentucky.

Board of Governors of the Federal Reserve System, September 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22707 Filed 9-12-95; 8:45 am]

BILLING CODE 6210-01-F

Keystone Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Keystone Financial Corporation, Harrisburg, Pennsylvania; to acquire Martindale Andres & Company, Inc., West Conshohocken, Pennsylvania, and thereby engage in investment advisory activities, pursuant to § 225.25(b)(4) of the Board's Regulation Y; and in brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 7, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-22708 Filed 9-12-95; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee (NVAC), Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines (ACCV) Subcommittee on Vaccine Safety, Subcommittee on Immunization Coverage, and Subcommittee on Future Vaccines: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–12 noon, September 28, 1995. 8:30 a.m.–1 p.m., September 29, 1995.

Place: Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Committee shall advise and make recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters To Be Discussed: The Committee will discuss the National Vaccine Program Office operations and staffing; report of the Task Force on Safer Vaccines; status of the Advisory Committee on Immunization Practices reevaluation of polio immunization recommendations; impact of Federal budget cuts on Federal vaccine research; update on the Children's Immunization Initiative, including the Vaccines for Children Program; Mercer Report: next step; update on pertussis trial; status of the Salk facility; impact on welfare reform; subcommittee reports: vaccine safety, immunization coverage, and future vaccines; and a working group report on adult immunization.

Name: Subcommittee on Vaccine Safety and the Advisory Commission on Childhood Vaccines Subcommittee on Vaccine Safety.

Time and Date: 1:30 p.m.–5 p.m., September 28, 1995.

Place: Hubert H. Humphrey Building, Room 337A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This joint ACCV/NVAC subcommittee will review issues relevant to vaccine safety and adverse reactions to vaccines.

Matters To Be Discussed: The Subcommittee will discuss the Institute of Medicine vaccine safety forum and summary of planned workshops; summary of the final report of the task force on safer childhood vaccines; and the charge of the Subcommittees.

Name: Subcommittee on Immunization Coverage.

Time and Date: 1:30 p.m.–5 p.m., September 28, 1995.

Place: Hubert H. Humphrey Building, Room 423A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Immunization Coverage will identify strategies and policy options by which to further improve the levels of immunization coverage.

Matters To Be Discussed: The Subcommittee will discuss determinants of under vaccination in preschool children; national, State, and local immunization coverage levels; current interventions for immunization and the future health environment.

Name: Subcommittee on Future Vaccines.

Time and Date: 1:30 p.m.–5 p.m., September 28, 1995.

Place: Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee on Future Vaccines will develop policy options and guide national activities which will lead to accelerated development, licensure, and best use of new vaccines in the simplest possible immunization schedules.

Matters to be Discussed: The Subcommittee will review and discuss the

terms of reference for the Subcommittee; identify the matrix of interactions and partnerships, via specific case studies; describe the process of priority-setting by each of the members of the vaccine research and development community, and define barriers to new vaccine development.

Agenda items for each meeting are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Committee Management Specialist, National Vaccine Program Office, CDC, 1600 Clifton Road, NE, M/S A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: September 7, 1995.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–22693 Filed 9–12–95; 8:45 am]

BILLING CODE 4163–18–M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) is amended to revise Chapter HA (Office of the Assistant Secretary for Health), and Chapter HC (Centers for Disease Control and Prevention). These revisions will reflect the transfer of responsibility for the National Vaccine Program Office (NVPO) from the Office of the Assistant Secretary for Health (OASH) to the Centers for Disease Control and Prevention (CDC). The Director of the National Vaccine Program (NVP) will continue to be the Assistant Secretary for Health. Specifically:

(1) The statement for the Office of the Assistant Secretary for Health (42 FR 61318, December 2, 1977, as amended most recently at 60 FR 18418, April 11, 1995) is amended to delete the title and statement for the NVPO (HA2). Responsibilities of this office are transferred to CDC. The Director of the NVP will continue to be the Assistant Secretary for Health;

(2) The statement for the Centers for Disease Control and Prevention (HC) (45 FR 69696, October 20, 1980, as amended most recently at 60 FR 17792–95, April 7, 1995) is amended to reflect the transfer of the NVPO from the Office of the Assistant Secretary for Health to the Office of the Director, CDC.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, HA–10, Organization, delete item 14. and renumber items 15. through 17. as items 14. through 16.

Under *Section HA–20, Functions,* after the title and statement for the *Office on Women's Health (HAW),* delete the title and statement in its entirety for the *National Vaccine Program Office (HA2).*

Under Chapter HA, Section HA–30, Delegations of Authority, add the following:

All delegations and redelegations of authority made to PHS officials which were in effect prior to the effective date of this reorganization will continue in effect in them or their successors, pending further redelegations, provided they are consistent with this reorganization.

Centers for Disease Control and Prevention

Under Part H, Chapter HC, Centers for Disease Control and Prevention, Section HC–B, Organization and Functions, following the title and statement for the CDC Washington Office (HCA6), insert the following title and statement:

National Vaccine Program Office (HCA8). The Office: (1) Advises the Director, CDC, regarding issues and concerns identified with the implementation of the responsibilities of the National Vaccine Program (NVP); (2) develops and provides the Director, CDC, an annual Plan for implementation of the responsibilities of the NVP for submission to the Director, NVP; (3) develops data and conducts analyses of Federal spending on vaccines and vaccine-related activities; (4) provides executive secretary and staff and administrative support to the National Vaccine Advisory Committee; (5) coordinates preparation and submission of the annual National Vaccine Report for transmittal by the Director, CDC, to the Director, NVP; and (6) coordinates CDC's development and preparation of data and information in support of the Director, NVP.

Dated: August 1, 1995.

Donna E. Shalala,

Secretary.

[FR Doc. 95–22640 Filed 9–12–95; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–05–1310–020241A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Officer of Management and Budget, Paperwork Reduction Project (1004–), Washington, DC 20503, telephone 202–395–7340.

Title: Coalbed Methane (43 CFR Part 3170).

OMB Approval Number: (Not Yet Assigned).

Abstract: The Bureau of Land Management is proposing a new rule at 43 CFR Part 3170 to encourage the development of coalbed methane (CBM) in Affected States where conflict over ownership of the resource exits. The new regulations will establish procedures to: space wells; pool conflicting interests; escrow costs and proceeds attributable to conflicting interests; allow the drilling, stimulation, and abandonment of CBM wells; and provide affected parties with notice and the opportunity to comment or object or both. In order to obtain specific approvals under the regulations, applications would submit information to BLM to demonstrate the orderly and efficient development of CBM while preserving the mineability of coal seams.

Bureau Form Number: None.

Frequency: Occasionally.

Description of Respondents: Respondents may range from individuals to multi-national corporations.

Estimated Completion Time: 100 hours. This estimate is based on an ''application'' defined as submitting all the required information to receive approval to: establish one spacing unit, pool all of the conflicting CBM ownership within the unit, and drill and stimulate one CBM well on the unit.

Annual Responses: Nine.

Annual Burden Hours: 900.
Bureau Clearance Officer (Alternate):
Wendy W. Spencer, (303) 236–6642.

Walt Rewinski,

Deputy State Director, Resources and Planning, Use and Protection.

[FR Doc. 95–22784 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–GJ–M

[AK–964–1410–00–P; F–14956–B]

Alaska; Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to White Mountain Native Corporation for approximately 15.00 acres. The lands involved are in the vicinity of White Mountain, Alaska.

Kateel River Meridian, Alaska

T. 10 S., R. 23 W.
Secs. 28 and 32.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 13, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Robin Rodriguez,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–22712 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–JA–P

[WO–300–1310–00]

Notice of Draft Report and Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability for review and comment of draft report on the Reinventing Government II (REGO II) proposal to transfer oil and gas Inspection and Enforcement (I&E) and Environmental Compliance responsibilities that are currently administered by the Bureau of Land Management (BLM) to individual States and Indian tribes.

SUMMARY: The onshore and gas program, administered by BLM, is one of the major mineral leasing programs in the Department of the Interior (DOI). At the end of 1994, more than 51,000 onshore oil and gas leases existed on Federal lands covering 39 million acres. About 19,500 leases were in producing status. The BLM is also responsible for operational management oversight of about 4,100 producing leases on Indian lands and supervision of drilling on nonproducing leases. Royalty income from onshore oil and gas production on Federal and Indian lands is over $600 million per year.

Under Vice President Gore's REGO II proposal, it has been proposed that the BLM transfer oil and gas inspection and enforcement responsibilities concerning production verification and environmental compliance to the individual States and Indian tribes. This proposal was initially intended as an unfunded transfer of the I&E and Environmental Compliance programs to States and Indian tribes. Subsequently, the DOI indicated that funding of these programs, commensurate with current BLM spending levels, may be made available to the States and Tribes if they elect to assume program responsibilities.

The information contained in the draft REGO II Report is based on preliminary issues and recommendations identified by the REGO II Task Force comprised of Federal, State and Tribal representatives. The purpose of the report is to: (1) Provide information on the Bureau's I&E and Environmental Compliance programs, (2) identify opportunities and limitations associated with program transfers, and (3) address important considerations that must be taken into account in evaluating the feasibility of transfers.

DATES: Copies of the draft report may be obtained by contacting Mike Pool at the address or telephone number listed below. Written comments on the draft report must be received by October 16, 1995.

ADDRESSES: Written comments should be sent to Mike Pool, Bureau of Land Management, Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401.

FOR FURTHER INFORMATION CONTACT: Mike Pool, (505) 599–8910.

Dated: September 6, 1995.

Mike Pool,

District Manager.

[FR Doc. 95–22713 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–FB–M

[UT–020–05–1430–01; U–54825]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action. Noncompetitive Sale of Public Land in Tooele County, Utah.

SUMMARY: The following land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719), at not less than the estimated fair market value of $3,100.00. The land will not be offered for sale until at least 60 days after the date of this notice.

Salt Lake Meridian,

T. 8 S., R. 19 W.,
Sec. 9, E½E½E½SW¼,
E½E½W½E½E½SW¼.
Containing approximately 25.0 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by dirct sale to Jay I. Hicks of Ibapah, Utah. It has been determined that the subject parcel contains no known mineral values, except for a prospective value for oil and gas; therefore, mineral interests except for oil and gas will be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The patent, when issued, will contain a reservation of oil and gas to the United States and the right to construct ditches and canals under the authority of the Act of August 30, 1890 (43 U.S.C. 945).

Detailed information concerning the sale are available for review at the Salt Lake District Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Salt Lake District, at the above address. In the absence of timely

objections, this proposal shall become the final determination of the Department of the Interior.

Dated: August 30, 1995.

Gary Wieser,

Acting Salt Lake District Manager.

[FR Doc. 95–22701 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–DQ–P

Fish and Wildlife Service

Notice of Availability of the Draft Environmental Assessment (Draft EA) for Additions to Shiawassee National Wildlife Refuge in Saginaw County, Michigan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service (Service) has made available for public comment a Draft EA to protect additional habitat on the existing 9,042-acre Shiawassee National Wildlife Refuge (Refuge). The Refuge is located at the confluence of the Shiawassee, Cass and Tittabawassee Rivers, adjacent to the Saginaw metropolitan area in Saginaw County, in Michigan's Lower Peninsula.

DATES: Written comments should be received by October 23, 1995. Public Open Houses are scheduled in the Saginaw metropolitan area from September 20–23, 1995. The exact dates, times and locations are listed under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056; Attention: Stanley Jackowicz, RE–AP. Copies of the Draft EA are available during normal business hours at the Shiawassee National Wildlife Refuge headquarters, 6975 Mower Road, Saginaw, Michigan 48601.

FOR FURTHER INFORMATION CONTACT: Doug Spencer, Refuge Manager at (517) 777–5930.

SUPPLEMENTARY INFORMATION: The Service proposes to protect approximately 7,500 acres of additional habitat in association with the existing Shiawassee National Wildlife Refuge (Refuge) located along the Saginaw River in the east-central portion of Michigan's Lower Peninsula. This additional protection is proposed to restore, protect and manage bottomland and upland habitat that would support the existing Refuge and Tributary watersheds of the Saginaw River. Historically the area was predominantly lowland hardwood forest, upland forest, emergent marsh, and scattered areas of lakeplain prairie. The proposal is also meant to provide areas of lakeplain prairie and emergent marshes that are either lacking or under-represented on the existing Refuge. This would help to restore the habitat and wildlife diversity the area once supported. The proposal is also meant to protect the lower reaches of the Cass, Tittabawassee and Shiawassee River watersheds that feed and support the existing refuge and Saginaw Bay of Lake Huron.

The purposes of the addition to the Shiawassee National Wildlife Refuge are:

1. Provide wildlife corridors by protecting, restoring, and managing wetlands and bottomland forest and upland habitats along the rivers for the many values associated with these plant communities.

2. Protect, restore and maintain the biological diversity of the area by preserving the native habitats and associated fish, migratory and resident wildlife.

3. Facilitate with other agencies, groups and private landowners the conservation of resources in the watersheds that support the refuge.

4. Provide for increased recreation, environmental education, and interpretative opportunities to the general public. Acquire, manage, and operate Green Point Environmental Learning Center in the City of Saginaw.

5. Work cooperatively with local communities on the establishment of a visitors center located near a major thoroughfare to promote eco-tourism in the metropolitan area.

The alternatives considered in the Draft EA are:

1. *No Action*—Rely on existing Federal, State, and local government laws, regulations, and ordinances to protect resources.

2. *Private Lands Agreements*—Rely on a program of technical outreach sponsored by the Service and Michigan Department of Natural Resources to assist landowners in the restoration and enhancement of wildlife and fish habitats in the area. The area would encompass 7,500 acres along the Cass, Shiawassee and Tittabawassee Rivers.

3. *Acquisition of 7,500 acres by Service as an Addition to the Shiawassee National Wildlife Refuge*—Under this alternative, the Service would use acquisition of fee title, easements, and leases from willing sellers, subject to appropriated funds to add to the existing Shiawassee National Wildlife Refuge.

4. *Acquisition of 5,688 acres by Service as an Addition to the Shiawassee National Wildlife Refuge*—Under this alternative, the Service would use acquisition of fee title, easements, and leases from willing sellers along the lower reaches of the Cass, Shiawassee, and Tittbawassee Rivers, subject to appropriated funds to add to the existing Shiawassee National Wildlife Refuge.

The Service's preferred alternative is #3—Acquisition of 7,500 acres as an addition to the Shiawassee NWR. The major issues discussed in the Draft EA include Service acquisition policy, effects on the tax base, loss of cropland, maintenance of existing ditches and dikes, mosquito control, effects on adjacent cropland, loss of residential development, fire protection responsibilities, and maintenance of township roads.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations.

The Service has scheduled six public open houses in the Saginaw area, the times and locations are as follows: Thomas Township Hall (249 N. Miller Road, Thomas Township) on Sept. 20, 1995, from 3:00 p.m. to 5:30 p.m.; James Township Hall (6060 Swan Creek Road, James Township) on Sept. 20, 1995, from 7:00 p.m. to 10:00 p.m.; Saginaw Township Hall (4980 Shattuck Road, Saginaw Township) on Sept. 21, 1995, from 3:00 p.m. to 5:30 p.m.; Bridgeport Township Hall (6206 Dixie Highway, Bridgeport) on Sept. 21, 1995, from 7:00 p.m. to 10:00 p.m.; Spaulding Township Hall (5025 E. Road (M–13), Spaulding Township) on Sept. 22, 1995, from 7:00 p.m. to 10:00 p.m.; and in the City of Saginaw at the Green Point Nature Center (3010 Maple Street, Saginaw) on Sept. 23, 1995, from 1:00 p.m. to 4:00 p.m.

The Draft EA will be available to the public on September 5, 1995. The deadline for public comments on the Draft EA is October 23, 1995.

Dated: September 5, 1995.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 95–22711 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Order Adjusting the Boundary of Theodore Roosevelt National Park, North Dakota, to Include Certain Lands

AGENCY: National Park Service, Interior.

ACTION: Boundary adjustment order.

SUMMARY: Pursuant to the authority contained in the Act of March 24, 1956, 70 Stat. 56, 16 U.S.C. 241e, and as a portion of U.S. Highway No. 10 has been realigned, the boundaries of Theodore Roosevelt National Park are being adjusted accordingly.

DATES: The effective date of this order shall be September 13, 1995.

FOR FURTHER INFORMATION CONTACT: Realty Officer, Intermountain Field Area, P.O. Box 25287, Denver, Colorado, 80225–0287, (303) 969–2611.

SUPPLEMENTAL INFORMATION: The above-cited Act authorizes the Secretary of the Interior to make adjustments in the boundaries of Theodore Roosevelt National Park along U.S. Highway No. 10 as he deems advisable and in the public interest if and when the alinement of the highway is changed, subject to the limitation that no more than 500 acres may be so added to the park.

U.S. Highway No. 10 has been realigned in the vicinity of the City of Medora, North Dakota, and it has been determined that a boundary adjustment is advisable in the area of the park entrance. The total acreage of Theodore Roosevelt National Park will be increased by 0.30 acre by this boundary adjustment. This increase does not exceed the acreage limitation set forth above. No lands are being excluded from the park as a result of this action.

Subject to valid existing rights, the following described lands are hereby added to Theodore Roosevelt National Park to be administered in accordance with the laws and regulations applicable thereto:

The City of Medora, Billings County, North Dakota.

All that portion of Third Avenue in the City of Medora which lies East of the Northeasterly right-of-way line of U.S. Highway No.10, and west of a line 140 feet West of and parallel to the Westerly line of Main Street in said City of Medora.

Containing 0.30 acre, more or less.

Dated: September 1, 1995.

Ronald E. Everhart,

Intermountain Field Director.

[FR Doc. 95–22748 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–70–P

Meeting: Committee for the Preservation of the White House

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, D.C. at 1 p.m., Friday, September 29, 1995. It is expected that the agenda will include policies, goals and long range plans. The meeting will be open, but subject to appointment and security clearance requirements, including clearance information by September 20, 1995.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m., weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, S.W., Washington, D.C. 20242.

Dated: September 6, 1995.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 95–22649 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 2, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by September 28, 1995.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Kenai Peninsula Borough-Census Area

Lee, Jesse, Home for Children, Swetmann Ave., Seward, 95001146

ARKANSAS

Ashley County

Fisher, John P., House, Jct. of AR 278 and Co. Rd. 50, W of Bayou Bartholomew Bridge, Portland vicinity, 95001141

Baxter County

Cotter High School Gymnasium, Old (Public Schools in the Ozarks MPS) 412 Powell St., Cotter, 95001147

Johnson County

Oark School—Methodist Church (Public Schools in the Ozarks MPS) Jct. of AR 215 and Co. Rd. 34, Oark, 95001142

CALIFORNIA

Del Norte County

BROTHER JONATHAN Shipwreck Site, Address Restricted, Crescent City vicinity, 95001132

Lake County

Cache Creek Archeological District, Address Restricted, Lower Lake vicinity, 95001130

Los Angeles County

Orange Heights—Barnhart Tracts Historic District, Roughly bounded by N. Los Robles Ave. W., N. El Molino Ave. E., Jackson St. N., and E. Mountain St. S., Pasadena, 95001128

Monterey County

Castroville Japanese Language School, 11199 Geil St., Castroville, 95001127

San Joaquin County

Hotel Lodi, 5 S. School St., Lodi, 95001140

COLORADO

Alamosa County

Alamosa County Courthouse, 702 Fourth St., Alamosa, 95001149

Routt County

Maxwell Building, 840 Lincoln Ave., Steamboat Springs, 95001148

DELAWARE

New Castle County

Johnson, William Julius ''Judy'' House, 3701 Kiamensi Ave., Christiana Hundred, Marshallton, 95001145

FLORIDA

Marion County

Kerr City Historic District, S of Co. Rd. 316, N of Lake Kerr, Fort McCoy vicinity, 95001150

Volusia County

Tourist Church, 501 N. Wild Olive Ave., Daytona, 95001139

GEORGIA

Fulton County

Orr, J. K., Shoe Company, 16 William Holmes Borders, Sr. Ave., Atlanta, 95001135

LOUISIANA

St. Mary Parish

Brubaker House, 1102 Second St., Morgan City, 95001133

Vermilion Parish

Broussard, Ovide, House, 309 E. St. Victor St., Abbeville, 95001136
Chauviere House, 108 N. Louisiana, Abbeville, 95001144
Gordy House, 503 Charity St., Abbeville, 95001131

Lyons House, 315 N. St. Charles St., Abbeville, 95001129

MASSACHUSETTS

Essex County

Tavern Acres Historic District, Bounded by Bradstreet Rd., Green and Main Sts. and Park Way, North Andover, 95001134

NEW JERSEY

Cumberland County

Trinity African Methodist Episcopal Church, Bridgeton-Milltown Rd. (NJ 49), E of Woodruff Rd. (Co. Rd. 553), Fairfield Twp., Gouldtown vicinity, 95001138

Somerset County

Vanderveer, Jacobus, House, Jct. of US 202 and 206, N of River Rd., Bedminster Twp., Pluckemin vicinity, 95001137

Union County

Mid-Town Historic District, Bounded by Broad, N. Broad, Dickinson, E. Grand, E. Jersey Sts., Commerce Place, Elizabeth Ave. and Martin L. King Plaza, Elizabeth, 95001143

A proposed move is being considered for the following property:

CALIFORNIA

Contra Costa County

Danville Southern Pacific Railroad Depot 355 Railroad Ave., Danville, 94000860

[FR Doc. 95–22631 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–70–P

Land Exchange Between the National Park Service and the City of Albuquerque

AGENCIES: National Park Service and City of Albuquerque.

ACTION: Proposed Land Exchange and Opportunity for Public Comment, Albuquerque, New Mexico.

SUMMARY: Pursuant to 16 U.S.C. Sec. 460*l*–22(b) and the Petroglyph National Monument Establishment Act of 1990, 104 Stat. 272, the National Park Service, hereinafter called the Service, requires that the public be notified of a proposed land exchange between this agency and the City of Albuquerque, hereinafter called the city. Both entities propose to exchange 0.11 of an acre owned by the Service outside the boundary of Petroglyph National Monument for two tracts, totaling 0.11 of an acre, that the city owns within the Atrisco Unit of the monument. The Service tract is located along Unser Boulevard 0.2 of a mile south of the Las Imagines Visitor Center within a 100-year flood hazard zone. A water drainage structure, operated and maintained by the city, currently exists on this tract. The city-owned tracts, consisting of 0.06 of an acre and 0.05 of an acre, are unimproved and were acquired as uneconomic remnants when the right-of-way for Unser Boulevard was acquired. Located along Unser Boulevard, these tracts are also situated south of the Visitor Center, 0.4 of a mile and 0.6 of a mile, respectively.

With the city responsible for handling the collection of drainage water adjacent to Unser Boulevard and the Service responsible for managing the lands within the Atrisco Unit of the monument, it is in the best interests of both agencies to consummate this exchange.

Both parties have determined that the lands and interests therein to be exchanged are of equal value.

COMMENTS AND FURTHER INFORMATION: The comment period on this proposed exchange ends 45 days from the date of this publication. Any comments pertaining to this exchange should be sent to the Superintendent, Petroglyph National Monument, 6001 Unser Boulevard, NW, Albuquerque, New Mexico 87120. Further information on this exchange can be obtained at the same address.

Dated: August 11, 1995.

John E. Cook,

Field Director, Intermountain Area, National Park Service.

[FR Doc. 95–22650 Filed 9–12–95; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–362 (Final) and 731–TA–707 through 710 (Final)]

Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe From Argentina, Brazil, Germany, and Italy

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (the Act) (19 U.S.C. §§ 1671d(b) and 1673d(b), respectively), that an industry in the United States is materially injured by reason of imports from Italy of certain seamless carbon and alloy standard, line, and pressure steel pipe and redraw hollows [2] that are subsidized by the Government of Italy, and by reason of imports from Argentina, Brazil, Germany, and Italy that are sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective December 23, 1994, and January 27, 1995, following preliminary determinations by the Department of Commerce that imports of certain seamless carbon and alloy standard, line, and pressure steel pipe and redraw hollows from Italy were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)), and that imports of such pipe from Argentina, Brazil, Germany and Italy [3] were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). The petition underlying these investigations was filed on June 23, 1994, prior to the effective date of the Uruguay Round Agreements Act.[4] Thus, these investigations were subject to the substantive and procedural rules of the Act, the pre-existing law.

Notices of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of January 12, 1995, March 1, 1995, and June 23, 1995 (60 FR 2984, 60 FR 11110, and 60 FR 32709). The hearing was held in Washington, DC, on June 20, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 26, 1995. The views of the Commission are contained in USITC Publication 2910 (July 1995), entitled ''Certain Seamless Carbon and Alloy Standard, Line, and Pressure Steel Pipe from Argentina, Brazil, Germany, and Italy: Investigations Nos. 701–TA–362 and 731–TA–707 through 710 (Final).''

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Imports are currently reported under Harmonized Tariff Schedule statistical numbers 7304.10.1020, 7304.10.5020, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, and 7304.59.8025.

[3] Commerce's preliminary determination of sales at LTFV regarding Italy was negative. Following Commerce's final affirmative determination of sales at LTFV, the Commission instituted its final antidumping investigation concerning Italy, effective June 14, 1995.

[4] *See* Pub. L. 103–465, approved Dec. 8, 1994, 108 Stat. 4809, at § 291.

Issued: September 7, 1995.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–22689 Filed 9–12–95; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32758]

Portland & Western Railroad, Inc.—Lease and Operation Exemption—Southern Pacific Transportation Company

Portland & Western Railroad, Inc. (PNWR), a noncarrier, has filed a notice of exemption to lease from Southern Pacific Transportation Company (SPT) and to operate three rail segments, all in the State of Oregon, totaling approximately 52.68 miles: (1) The 28.91-mile Tillamook Branch, between milepost 741.59 near Willsburg Jct. and milepost 770.50 near Schefflin; (2) the 9.45-mile Westside-Seghers Branch, between milepost 764.80 near Hillsboro and milepost 754.57 near Seghers; [1] and (3) the 14.32-mile Newberg Branch, between milepost 763.99 near Cook and milepost 749.67 near Newberg. SPT also granted PNWR incidental overhead trackage rights to operate over 3.69 miles of rail line between milepost 768.00 at Brooklyn Yard and the point of connection with the Tillamook Branch at milepost 741.59 near Willsburg Jct. The notice became effective on August 15, 1995.

PNWR is 100% owned and controlled by Genesee & Wyoming Industries, Inc. (GWI), and GWI controls nine class III rail carriers through stock ownership. Because, the three SPT lines connect with lines operated by Willamette & Pacific Railroad, Inc., a GWI controlled rail carrier, GWI has petitioned for an exemption in *Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Portland & Western Railway, Inc.*, Finance Docket No. 32759, to continue in control of PNWR and the other railroads in its corporate family after PNWR becomes a class III rail carrier. To consummate the instant transaction before Finance Docket No. 32759 is decided, GWI has placed PNWR in an independent voting trust. 49 CFR 1013.

Any comments must be filed with the Commission and served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., P.O. Box 796, 213 West Miner Street, West Chester, PA 19381–0796.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 6, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–22734 Filed 9–12–95; 8:45 am]

BILLING CODE 7035–01–P

[1] Although the mileposts for this line segment suggest that the line is 10.23 miles long, the actual mileage is 9.45 miles. The discrepancy is attributable to the mileposts not having been redesignated to reflect a previous abandonment.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 20, 1995, Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made written request to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Methylphenidate (1724).

The firm plans to produce bulk finished product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 13, 1995.

Dated: September 5, 1995.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 95–22765 Filed 9–12–95; 8:45 am]

BILLING CODE 4410–09–M

Office of Community Oriented Policing Services

Community Policing to Combat Domestic Violence

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of Availability.

SUMMARY: The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of grants to provide funding for implementing innovative community policing strategies to combat domestic violence to law enforcement agencies which partner with eligible domestic violence victim advocacy organizations.

The Community Policing to Combat Domestic Violence Initiative (''COPS/DV Initiative'') permits agencies which have demonstrated a solid community policing effort and are interested in specifically turning their focus, or strengthening their already progressive focus, towards domestic violence to apply for funding in partnership with an agency which provides domestic violence victim advocacy. Eligible applicants include State, local, and Indian law enforcement agencies with demonstrated commitments to community policing. Victim service agencies and organizations, domestic violence shelters, and non-profit, nongovernmental victim service providers are encouraged to partner with police agencies to apply under this program. Projects will be funded for a one-year period. The Catalog of Federal Domestic Assistance reference is 16.710.

DATES: COPS/DV Initiative Application Kits will be available on or about September 9, 1995. Completed applications should be returned to the COPS Office by November 17, 1995. Applications submitted after this deadline will not be accepted.

ADDRESSES: COPS/DV Initiative Applications Kits may be obtained by writing to COPS/DV Initiative, 1100 Vermont Avenue, N.W., 5th Floor, Washington, D.C. 20530, or by calling the Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770. Completed COPS/DV Initiative Application Kits should be sent to COPS/DV Initiative, COPS Office, 1100 Vermont Avenue, N.W., 5th Floor, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

SUPPLEMENTARY INFORMATION: Title I of the Violent Crime Control and Law

Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase the number of community oriented policing officers on the streets and to support innovative community policing projects. The COPS Office is offering the COPS/DV Initiative to provide one-year grants to agencies which have a demonstrated commitment to community policing to turn their focus, or strengthen their already progressive focus, towards domestic violence.

All state, local, Indian Tribal, and other public law enforcement agencies which are committed to using community policing to combat domestic violence are eligible to apply for funding in partnership with victim service agencies and organizations, domestic violence shelters, and non-profit, nongovernmental victim service providers. Law enforcement agency applicants must demonstrate that they are implementing an exemplary community policing program and that they currently train officers in community policing. Law enforcement agency applicants must submit with their application a memorandum of understanding between the agency and an eligible victim or community service organization, specifying the roles of all parties involved in the proposal and describing clearly the parameters of partnership between the participants.

Applicants must apply under one of three funding categories: (1) Domestic Violence Training with a Community Oriented Policing Philosophy (up to $2,000,000 in funding, not to exceed $250,000 per grant); (2) Problem Solving and Community Based Programs: Community Policing Partnerships and Problem Solving Initiatives Focusing on Domestic Violence (up to $5,000,000 in funding, not to exceed $200,000 per grant); or (3) Changing Police Organizations to be More Responsive to Domestic Violence (up to $3,000,000 in funding, not to exceed $150,000 per grant).

All applicants under the COPS/DV Initiative will be asked to provide an Application Summary Sheet, a Project Narrative, and a Budget Narrative. The Application Summary Sheet requests identifying information on the applicant agency; a brief description of the proposed project; and a brief description of the partnership between the law enforcement agency applicant and an eligible victim services organization. The Project Narrative requires a description of the innovative community policing project proposed and a narrative description of the law enforcement applicant agency's current community policing plan and practices. The Budget Narrative requires a description of the proposed project budget, including the identification of local contributions of funds, if any, to the proposed project.

Projects will be funded for a one-year period. The application deadline for the COPS/DV Initiative is November 17, 1995. Applications postmarked after this deadline will not be considered. An award under the COPS/DV Initiative will not affect the eligibility of any agency to apply to other COPS programs.

Dated: September 1, 1995.

L. Anthony Sutin,

Acting Director.

[FR Doc. 95–22660 Filed 9–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Joseph A. Cekola, et al.,* Case No. 1:93–CV–1006, was lodged with the United States District Court for the Western District of Michigan on August 31, 1995. The proposed consent decree resolves civil claims brought by the United States for the recovery of costs incurred in responding to polychlorinated biphenyl (PCB) and asbestos releases and threats of releases at the panelyte Site in Kalamazoo, Michigan. The decree requires the two Cekola defendants to reimburse $128,340, plus interest, to the United States through a court registry account.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Joseph A. Cekola, et al.,* Case No. 1:93–CV–1006 and the Department of Justice Reference No. 90–11–3–1234.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Michigan, 110 Michigan Street, N.W., Room 399, Grand Rapids, Michigan 49503; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–22659 Filed 9–12–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on September 5, 1995, a proposed consent decree in *United States* v. *Why Wastewater?, Inc.,* Civil Action No. EP95CA381, was lodged with the United States District Court for the Western District of Texas. The complaint filed by the United States sought injunctive relief and civil penalties for violations by defendant Why Wastewater?, Inc., (''WWI'') of Section 3005 of RCRA, 42 U.S.C. § 6925 and Sections 335.2 and 335.94 of the Texas Administrative Code, for storage of hazardous waste without a permit. The proposed consent decree imposes a $103,000.00 civil penalty for these violations and injunctive relief against WWI to cease storage of waste without a permit.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Why Wastewater?, Inc.,* DOJ #90–11–2–1029.

The proposed consent decree may be examined at the offices of the United States Attorney for the Western District of Texas, Federal Building, Suite 200, 700 E. San Antonio St., El Paso, Texas 79901 and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Effren Ordonez, Assistant Regional Counsel). A copy of the consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the decree may be obtained in

person or by mail from the Consent Decree Library. Such requests should be accompanied by a check in the amount of $5.50 (25 cents per page reproduction charge) payable to ''Consent Decree Library''. When requesting copies, please refer to *United States* v. *Why Wastewater?, Inc.*, DOJ #90–11–2–1029.

Joel Gross,

Acting Chief Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 95–22661 Filed 9–12–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

President's Committee on the International Labor Organization; Notice of Postponement of Closed Meeting

This document postpones the September 14, 1995 closed meeting of the President's Committee on the ILO. Notice of this closed meeting was previously published in the **Federal Register** on September 6, 1995, 60 FR 46308. The meeting is being postponed because of the scheduling difficulties of certain participants.

We anticipate that the meeting will be rescheduled in the future, and the Committee will publish such notice in the **Federal Register**.

For Further Information Contact: Mr. Joaquin F. Otero, President's Committee on the International Labor Organization, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2235, Washington, DC 20210, Telephone (202) 219–6043.

Signed at Washington, DC this 8th day of September, 1995.

Joaquin F. Otero,

Deputy Under Secretary, International Affairs.

[FR Doc. 95–22726 Filed 9–8–95; 8:45 am]

BILLING CODE 4510–28–M

Pension and Welfare Benefits Administration

[Application No. D–09845 and D–09846, et al.]

Proposed Exemptions; Prudential Property Investment Separate Account (PRISA) and Prudential Property Investment Separate Account II (PRISA II)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Prudential Property Investment Separate Account (PRISA) and Prudential Property Investment Separate Account II (PRISA II) Located in Newark, NJ

[Application Nos. D–09845 and D–09846]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply, effective December 31, 1995, to the advanced commitment to provide an enhanced return and the payment of such return by the Prudential Insurance Company of America (Prudential) to various employee benefit plans (the Plan or Plans) on the assets of such Plans which are invested either in PRISA and/or PRISA II (the Account or Accounts), as of April 1, 1994, and which remain invested for all or any portion of a twenty-one (21) month period, beginning April 1, 1994, and ending December 31, 1995, (the Investment Period), provided that the following conditions are met:

(1) The decision to invest funds in either or both of the Accounts for all or a portion of the Investment Period has

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

been and will be made by fiduciaries of the Plans independent of Prudential;

(2) The amount of the enhanced return payment with respect to the assets of the Plans that are invested in either or both of the Accounts for only a portion of the Investment Period will be calculated in the same manner as the amount of the enhanced return payment with respect to the assets of the Plans that remain invested in either or both of the Accounts for the entire Investment Period;

(3) The enhanced return will be derived by comparing the cumulative total return for the Investment Period reported by the expanded Russell-NCREIF Property Index (the Index) with the cumulative total return of PRISA or PRISA II for the same period;

(4) The Plans will obtain an enhanced rate of return (but not more than 200 basis points) for amounts invested in one or both of the Accounts during all or any portion of the Investment Period, if the cumulative total investment return of such Account for such Investment Period is less than that reported for the Index;

(5) The payments, if any, of enhanced return will be made by Prudential to investors in the Accounts not later than thirty (30) days following the final determination of the amounts owed;

(6) Every property held by the Accounts is individually valued at least once during the Investment Period and thereafter will be valued at least once in each calendar year by an independent qualified appraiser;

(7) A valuation policy committee (the Valuation Policy Committee), consisting of representatives from an valuation management firm (the Valuation Management Firm), Prudential Real Estate Investors (PREI), the interim and permanent advisory councils (the Advisory Council or Advisory Councils) composed of investors in PRISA and PRISA II and their consultants, and other clients of PREI, will meet at least quarterly and set valuation policy for the Accounts;

(8) The Valuation Management Firm, an independent third party, will be responsible for retaining (and terminating) all appraisal firms which value the properties in the Accounts; reviewing all appraisals generated by such appraisal firms; and collecting, reviewing, and distributing any information needed by such appraisal firms to appraise the properties in the Accounts;

(9) The Plans invested in the Accounts who receive the enhanced return will incur no additional cost or risk in connection with the transaction;

(10) In connection with the determination of enhanced return payments, no upward adjustment will be made by Prudential to the value reported by an external independent appraiser of any Property in PRISA and PRISA II without the concurrence of the Valuation Management Firm;

(11) Any required state insurance regulatory approvals are obtained for the transaction; and

(12) The Plans will receive the same treatment and proportional payment under the enhanced return as any other investor in PRISA and PRISA II.

Summary of Facts and Representations

1. Prudential is a mutual life insurance company organized under the laws of the State of New Jersey and subject to the supervision and examination by the Insurance Commissioner of the State of New Jersey. It is represented that Prudential is the largest life insurance company in the United States, with total consolidated assets, as of December 31, 1993, of approximately $218 billion.

Among the variety of insurance products and services it offers, Prudential provides funding, asset management and other services for thousands of employee benefit plans subject to the provisions of Title I of the Act. In this regard, Prudential maintains separate accounts in which pension, profit-sharing, and thrift plans participate. Prudential also manages the assets of such plans held in single customer separate accounts and advisory accounts.

2. PRISA and PRISA II are both open-end pooled separate accounts created by Prudential in 1970 and 1980, respectively. The Accounts were designed as funding vehicles for tax-qualified employee pension benefit plans to invest in real estate on a commingled basis. It is represented that the establishment and operation of PRISA and PRISA II have been approved by the New Jersey Insurance Commissioner.

As of June 30, 1994, PRISA had total net assets of approximately $2.25 billion, including interests in 124 properties located in 22 states and the District of Columbia. The investors in PRISA, as of June 30, 1994, consisted of 190 employee pension benefit plans, including 171 plans covered under the Act and 19 governmental plans that are exempt from coverage under the Act.

As of June 30, 1994, PRISA II had total net assets of approximately $575.6 million, including interests in 18 properties located in 12 states and the District of Columbia. The 38 investors in PRISA II, as of June 30, 1994, consisted of 28 plans covered under the Act and 10 governmental plans that are exempt from coverage under the Act.

The assets of the Accounts consist primarily of real property, and may also include mortgage loans, interests in companies, including partnerships, which acquire, develop or manage real property, and cash or cash equivalents. Interests in the Accounts are expressed in terms of units of participation, the value of which is determined periodically, based upon the net value of each of the Accounts (i.e. the market value of the real property and other assets held in an Account, less the amount of liability for indebtedness and expenses). It is represented that every property held by the Accounts is valued at least once in each calendar year by an independent qualified appraiser.

As separate accounts, PRISA and PRISA II hold assets which are segregated from all other assets held or managed by Prudential. In this regard, it is represented that the assets of each of the Accounts may be charged only with liabilities arising from the operation of that Account and may not be charged with liabilities arising from other business conducted by Prudential.

3. The assets of PRISA and PRISA II are managed by PREI. PREI is a division of the Prudential Investment Corporation which is a direct subsidiary of Prudential. It is represented that PREI is a full-service real estate investment advisor whose sole function is to provide real estate investment advisory and portfolio and asset management services to institutional investors. In addition to PRISA and PRISA II, PREI manages several other pooled separate accounts maintained by Prudential and also manages various single customer separate accounts and advisory accounts. It is represented that PREI currently manages real estate assets of approximately $4.6 billion.

4. The Plans which invest in PRISA and PRISA II consist of defined benefit plans and defined contribution plans. Investment in PRISA by defined contribution plans, where a unit value account is maintained for each individual plan participant, is limited to no more than 33 percent (33%) of the investment fund for which such unit value is determined. It is represented that PRISA II does not have this restriction on the extent of participation by defined contribution plans. The Retirement System for U.S. Employees and Special Agents, a defined benefit plan sponsored by Prudential has invested in PRISA and PRISA II since 1970 and 1980, respectively. It is represented that, as of June 30, 1994, approximately 4 percent (4%) of the

assets of this plan were in the aggregate invested in the Accounts.

The Plans participate in the Accounts, in accordance with the provisions of group pension annuity contracts offered by Prudential. Pursuant to the terms of such group pension annuity contracts, Prudential is appointed as an investment manager to each of the Plans, with discretion to delegate to one or more of its direct or indirect wholly-owned subsidiaries all or part of its authority under such contract. It is represented that for the performance of its duties as investment manager of each of the Accounts, Prudential charges a quarterly fee of a percentage of the value of the assets in each Account.[2] In this regard, Prudential acknowledges that it is a fiduciary and party in interest, pursuant to section 3(14) of the Act, with respect to each Plan, to the extent of the assets of such Plans which are invested in either or both Accounts, pursuant to the terms of such group pension annuity contracts.

5. It is represented that allegations of improprieties by Prudential in connection with the overvaluation of properties in the PRISA and PRISA II portfolios arose in November 1993, as part of a suit brought against Prudential by a former employee. In addition, such allegations were the subject of an investigation by the Department of Labor.[3] It is represented that Prudential hired an outside counsel, Sonnenschein Nath & Rosenthal (Sonnenschein), and an independent accounting firm, Kenneth Leventhal & Company (Leventhal), to conduct independent reviews of various aspects of these allegations. In this regard, Prudential made available to investors in PRISA and PRISA II on April 27, 1994, and to the Department on April 25 and June 26, 1994, the results of such independent reviews conducted by Sonnenschein and Leventhal.

As a result of these investigations and conclusions made by Sonnenschein and Leventhal, Prudential determined to taken certain steps to improve the operation and management of the Accounts. These efforts include: (a) Changing certain of the personnel responsible for the management of the Accounts; (b) establishing the Advisory Councils for each of the Accounts; (c) transferring responsibility for the valuation of properties from PREI to Prudential's Department of the Comptroller (the Comptroller); (d) retaining the services of the independent Valuation Management Firm; (e) creating the Valuation Policy Committee; (e) implementing a fiduciary education program for associates of Prudential; and (f) making financial remediation to investors in PRISA and PRISA II in order to restore each investor to his financial position, absent any overvaluation of PRISA and PRISA II properties.

6. In order to make the Accounts more attractive investments for the Plans and in addition to the other efforts taken by Prudential, as described above, Prudential proposes to provide an enhanced return and to pay such return to the Plans on the assets of such Plans which are invested in either or both Accounts, as of April 1, 1994, and which remain invested for all or any portion of the twenty-one (21) month Investment Period; provided any required state insurance regulatory approvals are obtained and the proposed exemption is granted.[4] In this regard, Prudential has requested exemptive relief from the prohibited transaction provision, set forth in section 406(a) of the Act, because it believes that its obligation to make the enhanced return payments could be viewed as an implicit or indirect extension of credit by the Plans to Prudential which will remain outstanding until such time as Prudential satisfies its obligation by payment of the enhanced return.

Further, in Prudential's view, the proposed enhanced return could give rise to a conflict of interest between Prudential and the Plans that invest in the Accounts in violation of section 406(b)(1) and (b)(2) of the Act. In this regard, the amount of each Account's cumulative total return for the Investment Period will be affected in part by Prudential's exercise of its fiduciary authority, control, and responsibility with respect to the operation and management of the Accounts, including the valuation of assets of the Accounts. Accordingly, it could appear that Prudential has an interest in maximizing the cumulative total return of the Accounts, as determined for the Investment Period, April 1, 1994 through December 31, 1995, thereby reducing the amount of, or entirely eliminating, Prudential's obligation to make the enhanced return payment.

7. With certain limitations, as more fully described below, the amount of enhanced return Prudential proposes to pay to the Plans invested in one or both of the Accounts will be derived by comparing the cumulative total return for the Investment Period reported by a preselected Index with the cumulative total return of PRISA or PRISA II for the same period.

The Index is an index of returns (before deduction of management fees) on real property investments in the United States. The Index is produced in partnership between Russell Real Estate Consulting (a division of the Frank Russell Company, an investment consulting firm) and the National Council of Real Estate Investment Fiduciaries (NCREIF). NCREIF is a non-profit association of institutional real estate investment professionals, including investment managers, plan sponsors, academicians, consultants, appraisers, CPAs, and other service providers who have significant involvement in pension fund real estate investments.

It is represented that all events giving rise to Prudential's payment obligation on the enhanced return will have occurred by December 31, 1995. However, Prudential expects that the information necessary to compare the cumulative total returns of PRISA and PRISA II to that of the Index for the Investment Period, April 1, 1994, through December 31, 1995, will not be available before the end of the second quarter of 1996. It is contemplated that the payments, if any, of enhanced return will be made by Prudential to investors in the Accounts not later than thirty (30) days following the final determination of the amounts owed.

Specifically, the maximum enhanced return shall be equal to the product of (i) one-seventh (1/7th), multiplied by (ii) the difference (but not more than 200 basis points) between the cumulative total return for the entire Investment Period reported by the Index and the cumulative total return of PRISA or PRISA II, prior to reduction for Prudential's management fees, for such entire period, multiplied by (iii) the number of complete calendar quarters that the amounts remain invested in PRISA or PRISA II during the Investment Period.

For example, in the case of an amount that is invested in an Account as of April 1, 1994, and is withdrawn on June 30, 1995, the enhanced return will be

[2] It is represented that Prudential and its affiliates rely upon the statutory exemption, as set forth in section 408(b)(2) of the Act, for the receipt of fees for investment management services provided with respect to PRISA and PRISA II. The Department, herein, expresses no opinion as to whether the provision of services by Prudential and its affiliates to PRISA and PRISA II and the compensation received therefore satisfy the terms and conditions, as set forth in section 408(b)(2) of the Act.

[3] Prudential represents that, by letter dated March 21, 1995, it was advised that the Department had concluded its investigation, and that no further action was contemplated at that time.

[4] By letter dated April 11, 1995, Prudential was advised that the New Jersey Insurance Department has approved the proposed enhanced return payment, as described herein.

equal to the difference between the cumulative total return for such period reported by the Index and the cumulative total return of the Account, prior to reduction for Prudential's management fees, for the same period, but not more than the enhanced return (not in excess of 200 basis points) determined with respect to the entire period April 1, 1994 through December 31, 1995, multiplied by five-sevenths (5/7ths).

9. Prudential represents that the exemption is administratively feasible in that the proposed transaction is narrowly circumscribed and of limited duration. In this regard, the proposed transaction involves a one-time determination of comparative investment returns based upon a recognized real estate industry index that can be readily reviewed and monitored for compliance in all applicable requirements. In addition, it is represented that the comparative return calculation involves a relatively simple and objective comparison of readily available return information, which can be easily confirmed by the fiduciaries of the Plans invested in the Accounts and by the Department. Further, it is represented that the Plans invested in the Accounts who receive the enhanced return will incur no additional cost or risk in connection with the proposed payment, and that Prudential will bear the cost of the exemption application and of notifying interested persons.

10. It is represented that the exemption is in the interest of the Plans and their participants and beneficiaries in that the Plan will obtain an enhanced rate of return (but not more than 200 basis points) for amounts invested in one or both of the Accounts during all or any portion of the Investment Period, if the cumulative total investment return of such Account for such Investment Period is less than that reported for the Index. In addition, Prudential expects that its commitment to provide the enhanced return will reduce requests from investors in one or both Accounts for withdrawal, and will thereby avoid the negative impact on the performance of such Accounts that would likely result from forced liquidation of the properties in the Accounts in order to obtain the cash necessary to satisfy withdrawal requests.

11. It is represented that the proposed exemption contains safeguards which protect the interests of the Plans and the rights of participants and beneficiaries. In this regard, the decision to invest funds in either or both of the Accounts for all or a portion of the Investment Period has been and will be made by fiduciaries of Plans independent of Prudential. In this regard, disclosure of Prudential's proposal to make enhanced return payments was first made to investors in the Accounts by correspondence, dated April 27, 1994. In addition, it is represented that the investors in the Accounts have been kept apprised of related developments in the Accounts, such as state insurance regulatory approvals and the filing of the exemption application. Further, it is represented that an additional level of independent oversight of the proposed transaction will occur through the review of the operations and returns of the Accounts conducted by interim and permanent Advisory Councils for PRISA and PRISA II.

It is represented that the interim Advisory Councils were created by Prudential to be in place through year-end 1994 or until the transition to the permanent Advisory Councils. The responsibilities of the interim Advisory Councils were: (a) To review and comment upon the composition, structure, responsibilities, frequency of meetings, selection of members, and other procedures to be followed by the permanent Advisory Councils; (b) to review and comment on suggested structural changes to the Accounts, including valuation and appraisal policy, dividend policy, and fees; and (c) prior to appointment of the permanent Advisory Councils, to satisfy all the responsibilities pertaining to the duties of such permanent Advisory Councils, as listed in the paragraph below.

The permanent Advisory Council for each Account will be composed of from seven to eleven (preferably nine) investors in the Accounts or their consultants or other representatives who have in-depth knowledge of real estate investment and management. Members of the Advisory Councils will be elected by investors on an investment weighted basis and will serve for a minimum of two (2) years. It is represented that formal meetings of the Advisory Councils will be held quarterly approximately thirty (30) days following the end of each quarter, with additional meetings to be held at the discretion of the Advisory Councils. It is represented that the Advisory Councils do not have veto authority. The role of the Advisory Councils is to monitor, review, comment, and advise. For each of the Accounts, the responsibilities of the permanent Advisory Council are: (a) To review Account investment strategy and philosophy, including diversification strategy; (b) to review the annual business plan for each Account, including the criteria for acquisitions, dispositions, capital expenditures and budgets, and to review quarterly variations to the business plan; (c) to review property and portfolio leverage strategy; (d) to review PREI's plans for paying out redemption requests; (e) to review data and reports sent to all clients; (f) to review and comment on acquisitions and dispositions; and (g) to make suggestions and to comment on all information presented at quarterly meetings.

It is represented that Prudential will calculate the enhanced return payments and will disclose such calculations in the open forum of the Advisory Councils with full disclosure (through distribution of the minutes of Advisory Council meetings) to all investors in the Accounts. Further, PREI will review the returns for each Account with the Advisory Councils for each Account. It is represented that the comparative return calculation for determining the amount of the enhanced return payments involves a relatively simple and objective comparison of readily available information, which can easily be confirmed by the Advisory Council and the account investors.

With respect to the valuation process, it is represented that all the properties in the Accounts will be individually valued at least once during the Investment Period and thereafter will be appraised by external, independent, qualified MAI appraisers at least annually. In this regard, it is represented that external appraisals are performed as of the last day of a calendar quarter. The current Prudential policy is for properties with market values in excess of $50 million to be externally appraised twice each year and properties with values below such amount to be externally appraised once each calendar year. In addition, it is represented that certain events (e.g., significant property or market changes, or internal adjustment of value over a certain threshold) can trigger additional external valuations.

Prudential proposes to strengthen the independence of the valuation process through the appointment of the Valuation Management Firm and the creation of the Valuation Policy Committee. In addition, Prudential has limited the role of PREI in the valuation process to the provision of property, tenant, and market information and participation on the Valuation Policy Committee.

The Valuation Policy Committee will consist of representatives from the Valuation Management Firm, PREI, the PRISA Advisory Council, and other clients of PREI. The Valuation Policy Committee will be chaired by an MAI

appraiser employed by Prudential (the Prudential Valuation Reviewer). It is represented that Phyllis A. Cummins (Ms. Cummins), Vice President and Chief Appraiser of Prudential and a member of the Comptroller's Department, is currently serving as the Prudential Valuation Reviewer.

It is represented that Ms. Cummins is qualified to serve as the Prudential Valuation Reviewer in that she has been employed by Prudential for over twenty (20) years and in that time has had significant experience in valuations, development, assets management, acquisitions, sales, and mortgages of all property types. In addition to being an MAI appraiser since 1983, Ms. Cummins holds the Counselor of Real Estate (CRE), the Certified Property Manager (CPM), and the Certified Shopping Center Manager (CSM) designations. Further, Ms. Cummins is certified in New Jersey as a General Appraiser and licensed as a Broker-Salesperson. Ms. Cummins is a graduate of The Ohio State University and received her MBA from the University of North Florida.

It is represented that the Valuation Policy Committee will meet at least quarterly and set valuation policy, including such items as the minimum qualifications for appraisal firms, fee schedules for such firms, rotation of appraisal firms, and valuation methodology. Prudential represents that it will bear the costs of the Valuation Policy Committee.

Prudential represents that, pursuant to guidelines established by the Valuation Policy Committee, it will retain for a non-renewable fixed term an experienced and qualified, independent third party to serve as the Valuation Management Firm. It is represented that the Valuation Management Firm will report to the Valuation Policy Committee. The Valuation Management Firm will be responsible for: (a) Retaining (and terminating) all appraisal firms which value the properties in the Accounts; (b) reviewing all appraisals generated by such appraisal firms for conformance to certain standards, including those established by the Valuation Policy Committee; and (c) collecting, reviewing, and distributing any information from PREI portfolio managers, asset managers, market intelligence coordinators, and third party property managers needed by such appraisal firms to appraise the properties in the Accounts. It is represented that Price Waterhouse is currently serving as the Valuation Management Firm.

It is represented that the costs of the appraisal firms and the Valuation Management Firm are currently paid by Prudential. However, after significant discussions with the PRISA and PRISA II Advisory Councils and investors in the Accounts, Prudential has proposed a revised fee schedule which includes passing on the costs of third party appraisers and the Valuation Management Firm to the Accounts. Prudential believes that this practice is customary in the industry. A proposal to revise the fee schedule is currently being reviewed by the appropriate state insurance departments. Subject to the necessary regulatory approval, Prudential has notified the investors in the Accounts (as required by contract) that it intends to implement this new fee schedule on March 31, 1997.[5] In the interim, it is represented that investors in the Accounts will be charged the lower of the two schedules until the new schedule goes into effect.

The Prudential Valuation Reviewer will serve as the Valuation Management Firm's contact at Prudential. In this regard, it is anticipated that the Valuation Management Firm will report the values of the properties in the Accounts to the Prudential Valuation Reviewer who will have final approval authority. In addition, the Prudential Valuation Reviewer may order additional external appraisals; or, as necessary, may adjust property values, based on tenant, property, or market information provided by PREI or otherwise made available, in calendar quarters when no independent appraisals have been performed. Prudential anticipates that the Prudential Valuation Reviewer will adjust a value estimate provided by an external appraisal only in rare circumstances and extremely infrequently. In this regard, since April 1, 1994, the Prudential Valuation Reviewer has modified the estimate of value of a property in an Account provided by an external appraiser in only one circumstance and where both the Prudential Valuation Reviewer and the Valuation Management Firm believed the external appraiser's estimate of value was overstated. It is represented that this adjustment in the value of a property was disclosed to the investors in the Account in the PRISA Quarter 1995 Report and in minutes of the May 3, 1995 Advisory Council meeting. It is represented that any such similar occurrences in the future will be disclosed in a like manner. Further, it is represented that no upward adjustment will be made to the value reported by an external appraiser of any property in the Accounts without the Valuation Management Firm's concurrence to such increase in value. It is represented that the Prudential Valuation Reviewer will document any such changes and will report all property values to Prudential's Comptroller, rather than to the PREI business unit.

It is represented that Prudential's Comptroller will be responsible for presenting values on financial statements (after adjusting any property not held in fee for the Account's applicable ownership interest). In addition, Prudential's Comptroller will calculate and present the unit values and returns for the Accounts.

12. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The decision to leave funds invested in either or both of the Accounts for all or a portion of the Investment Period has been and will be made by fiduciaries of the Plans independent of Prudential;

(2) The amount of the enhanced return payment with respect to the assets of the Plans that are invested in either or both of the Accounts for only a portion of the Investment Period will be calculated in the same manner as the amount of the enhanced return payment with respect to the assets of the Plans that remain invested in either or both of the Accounts for the entire Investment Period;

(3) The enhanced return will be derived by comparing the cumulative total return for the Investment Period reported by the Index with the cumulative total return of PRISA or PRISA II for the same period;

(4) The Plans will obtain an enhanced rate of return (but not more than 200 basis points) for amounts invested in one or both of the Accounts during all or any portion of the Investment Period, if the cumulative total investment return of such Account for such Investment Period is less than that reported for the Index;

(5) The payments, if any, of enhanced return will be made by Prudential to investors in the Accounts not later than thirty (30) days following the final determination of the amounts owed;

(6) Every property held by the Accounts is individually valued at least once during the Investment Period and thereafter will be valued at least once in each calendar year by an independent qualified appraiser;

(7) Independent oversight of the proposed transaction will occur through

[5] Prudential has not requested relief for the institution of the revised fee schedule which proposes to pass on the costs of third party appraisers and the Valuation Management Firm to the Accounts.

the review of the operations and returns of the Accounts conducted by interim and permanent Advisory Councils for PRISA and PRISA II;

(8) The Valuation Policy Committee will meet at least quarterly and set valuation policy for the Accounts;

(9) The Valuation Management Firm will be responsible for retaining (and terminating) all appraisal firms which value the properties in the Accounts; reviewing all appraisals generated by such appraisal firms; and collecting, reviewing, and distributing any information needed by such appraisal firms to appraise the properties in the Accounts;

(10) In connection with the determination of enhanced return payments, no upward adjustment will be made by Prudential to the value reported by an external independent appraiser of any Property in PRISA and PRISA II without the concurrence of the Valuation Management Firm;

(11) The Plans invested in the Accounts who receive the enhanced return will incur no additional cost or risk in connection with the transaction;

(12) The transaction is subject to state insurance regulatory approvals;

(13) The calculation of the enhanced return involves a one-time determination of comparative investment returns based upon a recognized real estate industry index that can be readily reviewed and monitored for compliance in all applicable requirements;

(14) The comparative return calculation involves a relatively simple and objective comparison of readily available return information, which can be easily confirmed by the fiduciaries of the Plans invested in the Accounts and by the Department; and

(15) The Plans will receive the same treatment and proportional payment under the enhanced return as any other investor in PRISA and PRISA II.

Notice to Interested Persons

Those persons who may be interested in the pendency of the proposed exemption include fiduciaries, participants and beneficiaries of the Plans that are invested in one or both of the Accounts. However, it is represented that there are hundreds of thousands of participants in the Plans that invest in one or both of the Accounts. Because of the impracticality of providing notice to all such persons, Prudential proposes to give notice to interested persons by distributing the Notice of Proposed Exemption, as published in the **Federal Register**, together with a supplemental statement in the form set forth in the Department's regulations under 29 C.F.R. 2570.43(b)(2), to the contractholder on behalf of each of the Plans that was invested in PRISA or PRISA II, as of April 1, 1994. It is represented that these contractholders are generally the sponsors of the Plans or the trustees or administrators of the Plans. Distribution of notice will be effected by first-class mail, postage pre-paid, within fifteen (15) days of the date of publication of the Notice of Proposed Exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

First Hawaiian Bank Located Honolulu, HI

[Application No. D–09877]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[6]

Section I. Exemption for In-Kind Transfer of Assets

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the in-kind transfer to any open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the '40 Act) to which First Hawaiian Bank or any of its affiliates (collectively, the Bank) serves as investment adviser and may provide other services, of the assets of various employee benefit plans (the Plan or Plans) that are held in certain collective investment funds (the CIF or CIFs) maintained by the Bank or otherwise held by the Bank as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds, provided the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives advance written notice of the in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Fund and the disclosures described in paragraph (g) of Section II below.

(b) On the basis of the information described in paragraph (g) of Section II below, the Second Fiduciary authorizes in writing the in-kind transfer of assets of the Plans in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees received by the Bank in connection with its services to the Fund. Such authorization by the Second Fiduciary to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commissions are paid by the Plans in connection with the in-kind transfers of asset of the Plans or the CIFs in exchange for shares of the Funds.

(d) All or a pro rata portion of the assets of the Plans held in the CIFs or all or a pro rata portion of the assets of the Plans held by the Bank in any capacities as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds.

(e) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer.

(f) The current market value of the assets of the Plans or the CIFs to be transferred in-kind in exchange for shares is determined in a single valuation performed in the same manner and at the close of business on the same day, using independent sources in accordance with the procedures set forth in Rule 17a–7b (Rule 17a–7) under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the date of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(g) Not later than 30 business days after completion of each in-kind transfer of assets of the Plans or the CIFs in

[6] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

(1) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the '40 Act;

(2) The price of each of the assets involved in the transaction; and

(3) The identity of each pricing service or market maker consulted in determining the value of such assets; and

(h) No later than 90 days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, the Bank sends by regular mail to the Second Fiduciary, who is acting on behalf of each affected Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, a written confirmation that contains the following information:

(1) The number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(i) The conditions set forth in paragraphs (d), (e), (f), (o), (p), (q) and (r) of Section II below are satisfied.

Section II. Exemption for Receipt of Fees From Funds

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) of the Code shall not apply to the proposed receipt of fees by the Bank from the Funds for acting as the investment adviser, custodian, sub-administrator, and other service provider for the Funds in connection with the investment in the Funds by the Plans for which the Bank acts as a fiduciary provided that:

(a) No sales commissions are paid by the Plans in connection with purchases or sales of shares of the Funds and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds.

(b) The price paid or received by the Plans for shares in the Funds is the net asset value per share, as defined in paragraph (e) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director purchases from or sells to any of the Plans shares of any of the Funds.

(d) As to each individual Plan, the combined total of all fees received by the Bank for the provision of services to the Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) The Bank does not receive any fees payable, pursuant to Rule 12b–1 under the '40 Act (the 12b–1 Fees) in connection with the transactions.

(f) The Plans are not sponsored by the Bank.

(g) A Second Fiduciary who is acting on behalf of each Plan and who is independent of and unrelated to the Bank, as defined in paragraph (g) of Section III below, receives in advance of the investment by the Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund (including, but not limited to, a current prospectus for each portfolio of each of the Funds in which such Plan is considering investing and a statement describing the fee structure).

(h) On the basis of the information described in paragraph (g) of this Section II, the Second Fiduciary authorizes in writing the investment of assets of the Plans in shares of the Funds and the fees received by the Bank in connection with its services to the Funds. Such authorization by the Second Fiduciary is consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(i) The authorization, described in paragraph (h) of this Section II, is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected by the Bank selling the shares of the Fund held by the affected Plan within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (i) of Section III below, or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

(j) Plans do not pay any Plan-level investment management fees, investment advisory fees, or similar fees to the Bank with respect to any of the assets of such Plans which are invested in shares of any of the Funds. This condition does not preclude the payment of investment advisory fees or similar fees by the Funds to the Bank under the terms of an investment advisory agreement adopted in accordance with section 15 of the '40 Act or other agreement between the Bank and the Funds.

(k) In the event of an increase in the rate of any fees paid by the Funds to the Bank regarding any investment management services, investment advisory services, or fees for similar services that the Bank provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (h) of this Section II, the Bank will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(l) In the event of an addition of a Secondary Service, as defined in paragraph (h) of Section III below, provided by the Bank to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to the Bank for any Secondary Service, as defined in paragraph (h) of Section III below, that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Plan, in accordance with paragraph (h) of this Section II, the Bank will at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary

of each of the Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(m) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (n) of this Section II, which expressly provides an election to terminate the authorization, described above in paragraph (h) of this Section II, with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Plans, without penalty to such Plans. Such termination will be effected by the Bank redeeming shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of the Bank, the redemption of shares of such Plans cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of a Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of the Bank to engage in the transactions on behalf of such Plan.

(n) The Second Fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (n) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraphs (k) and (l) of this Section II, except to the extent required by said paragraphs (k) and (l) of this Section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(o)(1) With respect to each of the Funds in which a Plan invests, the Bank will provide the Second Fiduciary of such Plan:

(A) At least annually with a copy of an updated prospectus of such Fund;

(B) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to the Bank; and

(2) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with the Bank, the Bank will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to the Bank by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Bank;

(C) The average brokerage commissions per share, expressed as cents per share, paid to the Bank by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Bank.

(p) All dealings between the Plans and any of the Funds are on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(q) The Bank maintains for a period of 6 years the records necessary to enable the persons, as described in paragraph (r) of Section II below, to determine whether the conditions of this proposed exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (r) of Section II below;

(r)(1) Except as provided in paragraph (r)(2) of this Section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) of Section II above are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service (the Service) or the Securities and Exchange Commission (the SEC);

(ii) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (r)(1)(ii) and (r)(1)(iii) of Section II shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term ''Bank'' means First Hawaiian Bank and any affiliate of the Bank, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund or Funds'' means any diversified open-end investment company or companies registered under the '40 Act for which the Bank serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in

section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of the Bank (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/adviser, (ii) the approval of any purchase or redemption by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III above, shall not apply.

(h) The term ''Secondary Service'' means a service, other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(i) The term ''Termination Form'' means the form supplied to the Second Fiduciary, at the times specified in paragraphs (k), (l), and (n) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in paragraph (h) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plans and to notify the Bank in writing to effect such termination by redeeming the shares of the Fund held by the Plans requesting termination within one business day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of the Bank, the redemption cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

Summary of Facts and Representations

Description of the Parties

1. The parties or entities that are involved in the subject transactions are described as follows:

a. *The Bank* is state-chartered bank that is incorporated under the laws of Hawaii and maintains its principal office at 1132 Bishop Street, Honolulu, Hawaii. The Bank is a wholly-owned subsidiary of First Hawaiian, Inc., a Delaware holding company.

Over the past seventy years, the Bank and its corporate predecessors have provided asset management services to several types of accounts including personal trusts, guardianship and probate accounts, corporate assets portfolio accounts and employee benefit plans including HR–10 Plans. As of May 1, 1994, the Bank had total assets under management of approximately $1.5 billion. The Bank serves as trustee with respect to the CIFs and as an investment adviser to the Fund portfolios described herein.

b. *The Plans* consist of retirement plans qualified under section 401(a) of the Code with respect to which the Bank serves or will serve as a trustee or investment fiduciary and that constitute ''pension plans'' as defined in section 3(2) of the Act and section 4975(e)(1) of the Code. The Plans do not include any plans that are sponsored by the Bank.[7]

c. *The CIFs* consist of separate investment portfolios of the First Hawaiian Bank Collective Investment Trust for Employee Benefit Trusts (the Collective Investment Trust) or similar investment trusts that may be established and maintained by the Bank. The Bank serves as trustee of the Collective Investment Trust.

As of June 30, 1993, the aggregate fair market value of the current CIFs maintained by the Bank was approximately $165.3 million. Participation in the CIFs is limited to Plans and public retirement funds for which the Bank acts as trustee or co-trustee or agent for the trustee or trustees of such Plan or CIF.

The CIFs that will be involved initially in the subject transactions are the Equity Fund, the HR–10 Equity Fund and the Pooled Fixed Income Fund.[8] These CIFs will be terminated immediately following the in-kind transfers.[9]

d. *The Funds* are separate portfolios of open-end investment companies registered under the '40 Act. The Funds currently consist of the Bishop Street Funds, a Massachusetts business trust that was established on May 25, 1994. The Bishop Street Funds constitute a no-load, open-end management investment company with four portfolios in existence. The existing Funds include the Equity Fund (corresponding to the Pooled Equity Fund and the HR–10 Equity Fund of the Collective Investment Trust) and the High-Grade Income Fund (corresponding to the Fixed Income Fund of the Collective Investment Trust).

The Bishop Street Funds will issue two classes of shares. Institutional Class A shares will be offered primarily to agency, fiduciary, custodial and advisory clients of the Bank. Retail Class B shares will be offered primarily to individuals. The Bishop Street Funds will be offered and sold exclusively through the use of prospectuses and other materials and will be offered and sold in full compliance with regulations of the SEC.

The Bank will serve as the investment adviser to each of the Bishop Street Funds. As the investment adviser, the Bank will make investment decisions with respect to the assets of each Fund and continuously review, supervise and administer each Fund's investment program. For investment advisory services rendered to the Funds, the Bank will receive an investment advisory fee. The Bishop Street Funds will pay separate fees for services provided to the Funds by the transfer agent, administrator and custodian, all of whom will not be affiliated with the Bank. Neither the Bank nor its affiliates will receive any 12b–1 fees from the Funds.

Description of the Transactions

2. Because the Bank recognizes that (a) in-kind transfers to Funds that the Bank services or advises of all or a *pro rata* portion of Plan assets in the CIFs or all or a *pro rata portion of Plan assets*

[7] The Department herein is not proposing relief for transactions afforded relief by Section 404(c) of the Act.

[8] The Pooled Equity Fund and the HR–10 Equity Fund principally invest in equity securities. The Pooled Fixed Income Fund invests primarily in fixed income securities or other tangible or intangible property or interests in either real or personal property.

[9] A fourth CIF, the Pooled Short-Term Fixed Income Fund, will be terminated at or prior to the time that the other CIFs are converted. At present, the only investor in this CIF is the Pooled Fixed Income Fund.

that the Bank otherwise manages, and (b) the approval process for additional services for which a fee is charged and fee increases by the Bank for these services may be outside the scope of Prohibited Transaction Exemption 77–4 (42 FR 18732, April 8, 1977), the Bank has requested relief for the transactions described in Sections I and II. Each of these transactions is discussed more fully herein. The proposed exemption is conditioned on the satisfaction of certain requirements and compliance with various general conditions which are also discussed below. It is the Bank's express intention that the description of these transactions and the conditions of the requested exemption with respect to such transactions will be applicable uniformly to the current Funds and to any of the other Funds for which the Bank serves as the investment advisor and in which the Plans invest.

In-Kind Transfers to Funds

3. The Bank has maintained CIFs in which the Plans have invested in accordance with requirements under Hawaiian banking law that apply to CIFs. The Bank has decided to terminate all current CIFs and to offer to the Plans participating in such CIFs appropriate interests in certain Funds as alternative investments. Because interests in CIFs generally must be liquidated or withdrawn to effect distributions, the Bank believes that the interests of the Plans invested in CIFs would be better served by investment in shares of the Funds which can be distributed in-kind. Also, the Bank believes that the Funds offer the Plans numerous advantages as pooled investment vehicles. In this regard, the Plans, as shareholders of a Fund, have the opportunity to exercise voting and other shareholder rights.

The Plans, as shareholders of the Funds, as mandated by the SEC, periodically receive certain disclosures concerning the Funds: (a) A copy of the prospectus which is updated annually; (b) an annual report containing audited financial statements of the Funds and information regarding such Funds' performance (unless such performance information is included in the prospectus of such Funds); and (c) a semi-annual report containing unaudited financial statements. In addition, at the option of the Funds, the Plans may receive other pertinent information.

With respect to the Plans, the Bank reports all transactions in shares of the Funds in periodic account statements provided the Second Fiduciary of each of the Plans. Further, the Bank maintains that the net asset value of the portfolios of the Funds can be monitored daily from information available in newspapers of general circulation.

In order to avoid the potentially large brokerage expenses that would otherwise be incurred, the Bank proposes that from time to time it may be appropriate for an individual Plan for which the Bank serves as a fiduciary to transfer all or a *pro rata* share of its in-kind assets to any of the Funds in exchange for shares of such Funds. In this regard, for example, in the case of an in-kind exchange between an individual Plan whose portfolio consists of common stock, money market securities and real estate, and a Fund that, under its investment policy, invests only in common stock and money market securities, the exchange would involve all or a *pro rata* share of the common stock and money market securities held by the Plan, if such stock and securities are eligible for purchase by the Fund, and would not involve the transfer or exchange of the real estate holdings of such Plan. A Fund's eligible investments are set forth in its prospectus. No brokerage commission or other fees or expenses (other than customary transfer charges paid to parties other than the Bank or its affiliates) will be charged to the Plans or the CIFs in connection with the in-kind transfers of assets into the Funds and the acquisition of shares of the Funds by the Plans or the CIFs. Thus, the Bank has requested prospective relief for transactions which would involve: (a) The in-kind transfer by the CIFs of all or a *pro rata* portion of the assets of any of the Plans held in such CIFs to the Funds in exchange for shares of the Fund which subsequently are distributed to the Plans; or (b) the in-kind transfer of all or a *pro rata* portion of the assets of any of the Plans held by the Bank in any capacity as fiduciary on behalf of such Plans to the Funds in exchange for shares of such Funds; provided that conditions described in Section I above are satisfied.

The Bank maintains that the in-kind transfers of assets in exchange for shares of the Funds are ministerial transactions performed in accordance with pre-established objective procedures which are approved by the board of trustees of each Fund. Such procedures require that assets transferred to a Fund: (a) Are consistent with the investment objectives, policies, and restrictions of the corresponding portfolios of such Fund, (b) satisfy the applicable requirements of the '40 Act and the Code, and (c) have a readily ascertainable market value. In addition, any assets that are transferred will be liquid and will not be subject to restrictions on resale. Assets which do not meet these requirements will be sold in the open market through an unaffiliated brokerage firm prior to any transfer in-kind. Further, prior to entering into an in-kind transfer, each affected Plan receives certain disclosures from the Bank and approves such transaction in writing.

Valuation of assets transferred in-kind to the Funds will be established by reference to independent sources. In this regard, for purposes of the transaction, it is represented that all assets transferred in-kind are valued in accordance with the valuation procedures described in Rule 17a–7 under the '40 Act, as amended from time to time or any successor rule, regulation, or similar pronouncement and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day preceding the date of the Plan or CIF transfers determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

Further, the Bank represents that within 30 days of the completion of a transfer in-kind, it will provide to Plans written confirmation of the identity of each security valued under Rule 17a–7(b)(4), the price of each security, and the identity of each pricing service or market maker consulted in determining the value of the assets transferred. The securities subject to valuation under Rule 17(a)–7(b)(4) include all securities other than ''reported securities,'' as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act), or those quoted on the NASDAQ system or for which the principal market is an exchange.

The value of the assets transferred in-kind will be equal to the aggregate value of the corresponding portfolios shares of the Fund at the close of business on the date of the transaction. In this regard, it is represented that for all conversion transactions that occur after the date of this proposed exemption, the Bank, no later than 90 days after completion of each in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Funds, will mail to the Second Fiduciary a written confirmation of the

number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred), and the number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

The Initial Exemption Transactions

4. The Bank has requested prospective exemptive relief, for the in-kind transfer to the Bishop Street Funds. At the time of such in-kind transfer, all of the assets of the three CIFs described above, which are maintained by the Bank and in which the Plans hold interests, will be transferred to the Bishop Street Funds which have investment objectives and policies substantially identical to those of the CIFs. At the same time, the three CIFs will be terminated and the assets of each, then consisting of shares in portfolios of the Bishop Street Funds, will be distributed in-kind to the Plans participating in such CIFs based on each Plan's *pro rata* share of the assets of the CIFs on the date of the transaction.

The Bank will provide to each affected Plan disclosures that announce the termination of the CIFs, summarize the transaction and otherwise comply with provisions of Section I of the exemption. Based on these disclosures, the Second Fiduciary from each affected Plan will approve in writing the transfer of the CIFs' assets to the corresponding portfolios of the Bishop Street Funds in exchange for shares of the Bishop Street Funds, and the receipt by the Bank of fees for services to the Bishop Street Funds. The assets of Plans that do not approve investment in the Bishop Street Funds will be withdrawn from the CIFs and held or invested in appropriate alternative investments in accordance with the terms of such Plans.

Prior to the transaction, the assets of the three CIFs will be reviewed to confirm that such are appropriate investments for the corresponding portfolios of the Bishop Street Funds into which such assets will be transferred. If any of the assets of the three CIFs are not appropriate for the Bishop Street Funds, the Bank intends to sell such assets in the open market through an unaffiliated brokerage firm prior to the transfer.

The assets transferred by the three CIFs to the Bishop Street Funds will consist entirely of cash and marketable securities. For purposes of the transfer in-kind, the value of the securities in each of the three CIFs will be determined based on market values as of the close of business on the last business date prior to the transfer (the CIF Valuation Date). The values will be determined in a single valuation using the valuation procedures described in Rule 17a–7 under the '40 Act. In this regard, the ''current market price'' for specific types of CIF securities involved in the transaction will be determined as follows:

a. If the security is a ''reported security'' as the term is defined in Rule 11Aa3–1 under the 1934 Act, the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the CIF Valuation Date; or if there are no reported transactions in the Consolidated System that day, the average of the highest independent bid and the lowest independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act), as of the close of business on the CIF Valuation Date; or

b. If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on the CIF Valuation Date; or if there is no reported transaction on such exchange that day, the average of the highest independent bid and lowest independent offer on such exchange as of the close of business on the CIF Valuation Date; or

c. If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest independent bid and lowest independent offer reported on Level 1 of NASDAQ as of the close of business on the CIF Valuation Date; or

d. For all other securities, the average of the highest independent bid and lowest independent offer as of the close of business on the CIF Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, the Bank intends to obtain quotations from at least three sources that are either broker-dealers or pricing services independent of and unrelated to the Bank and, where more than one valid quotation is available, use the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a–7.

The securities received by the corresponding portfolios of the Bishop Street Funds will be valued by such portfolio for purposes of the transfer in the same manner and on the same day as such securities will be valued by the CIFs. The per share value of the shares of each portfolio of the Bishop Street Funds issued to the CIFs will be based on the corresponding portfolio's then current net asset value. As a result of the proposed procedure, the Bank expects that the aggregate value of the shares of the corresponding portfolio of the Bishop Street Funds issued to the CIFs to be equal to the value of the assets (cash and marketable securities) transferred to such portfolio as of the opening of business on next business day following the CIF Valuation Date. The Bank also expects the value of a Plan's investment in shares of a corresponding portfolio of the Bishop Street Funds as of the opening of business on the date of the transaction will be equal to the value of such Plan's investment in the CIF as of the close of business on the last business day prior to the transaction.

Not later than 30 business days after completion of the transaction, the Bank will send by regular mail a written confirmation of the transaction to each affected Plan. Such confirmation will contain: (a) The identity of each security that is valued in accordance with Rule 17a7(b)(4), as described above; (b) the price of each such security for purposes of the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities. In accordance with the conditions under Section I of the proposed exemption, similar procedures will occur upon any future in-kind exchanges between CIFs maintained by the Bank or Plans, and the Funds.

Receipt of Fees From Funds

5. Under certain conditions, PTE 77–4 permits the Bank to receive fees from the Funds under either of two circumstances: (a) Where a Plan does not pay any investment management, investment advisory, or similar fees with respect to the assets of such Plan invested in shares of a Fund for the entire period of such investment; or (b) where a Plan pays investment management, investment advisory, or similar fees to the Bank based on the total assets of such Plan from which a credit has been subtracted representing such Plan's *pro rata* share of such investment advisory fees paid to the Bank by the Fund. As such, it is represented that there are two levels of fees—those fees which the Bank charges to the Plans for serving as trustee with investment discretion or as investment manager (the Plan-level fees); and those fees the Bank charges to the Funds (the Fund-level fees) for serving as investment advisor, custodian, or service provider.

Plan-level investment management, investment advisory, or fees for similar services provided by the Bank are currently charged in the form of a single asset-based investment management fee. There is also a Plan-level trustee fee for basic administrative services provided by the Bank as well as other specific service fees, such as a cash ''sweep'' fee. Currently, the annual investment management fee for assets invested in the Pooled Equity Fund and the HR–10 Equity Fund is 0.60 percent of assets under management, based on the daily net asset value of the fund. The fee for

assets invested in the Pooled Fixed Income Fund is 0.40 percent of assets under management, based on the daily net asset value of the fund. Plan-level fees are subject to annual minimums for administration and management expressed as flat dollar amounts and administrative fees are subject to the application of certain ''break points.'' In addition to the Plan-level fees for investment management, investment advisory, or similar services, a one-time fee (also a flat dollar amount) may be charged in connection with the establishment of an account for a Plan, and separate transaction fees may be charged for various administrative transactions, such as for example, a participant loan. Depending on the terms governing documents of the Plan, Plan-level fees are paid to the Bank either by the sponsor of the Plan or from the assets of the Plan. Plan-level fees for investment management, investment advisory or similar investment services will terminate immediately after the execution of the subject transactions described herein.

As mentioned above, the Bank may receive Fund-level fees. Such Fund-level fees can be divided into: (a) Fees paid to the Bank by a Fund for investment management, investment advisory, or similar services provided to such Fund, and (b) fees paid to the Bank for administrative, custodial, transfer, accounting, and other Secondary Services provided either to such Fund or to the distributor of shares of such Funds and its affiliates. The Bank is currently not paid any fees in this category from the Bishop Street Funds. The current fee arrangements between the Bank and the Bishop Street Funds provide for the Bank to receive fees from the Bishop Street Funds only for acting as investment adviser. This compensation paid to the Bank for investment advisory services is in accordance with agreements between the Bishop Street Funds and the Bank. In this regard, it is represented that the Bishop Street Funds' Trustees and the shareholders of the Bishop Street Funds approve the compensation that the Bank receives from the Bishop Street Funds. Also, the Bishop Street Funds' Trustees approve any changes in the compensation paid to the Bank for services rendered to the Bishop Street Funds.

With respect to Plans managed by the Bank that are invested in the Funds, although such Plans will no longer pay a Plan-level investment management fee to the Bank, a Plan-level fee will continue to be charged to the Plans for basic administrative services not including investment management.[10] Such administrative services would include, among others, the Bank's acting as custodian of the assets of a Plan, maintaining the records of a Plan, preparing periodic reports concerning the status of the Plan and its assets, and accounting for contributions, benefit distributions, and other receipts and disbursements. These functions performed by the Bank on the Plan-level are separate and distinct from those performed on the Fund-level by the Bank.

The Bank will continue to receive Plan-level compensation from the Plans for investment management services provided with respect to assets of the Plans *not* invested in shares of any of the Funds. Since the Plan-level investment management fee for Plans investing in the Funds will terminate, there will be no credit to the Plans their *pro rata* share of the investment advisory fees paid at the Fund-level. Instead, the only compensation received by the Bank for investment advisory services will be that which is paid by the Funds to the Bank for such services rendered to such Funds. In addition, the Bank will retain fees for providing Secondary Services to the Funds.

The Bank believes that this proposed fee arrangement complies with PTE 77–4. However, there is one difference from PTE 77–4 requested by the Bank for which an exemption is required. In this regard, one of the requirements of PTE 77–4 has been that any change in any of the rates of fees would require prior written approval by the Second Fiduciary of the Plans participating in the Funds. The applicant maintains that where many Plans participate in a Fund, the addition of a service or any good faith increase in fees could not be implemented until written approval of such change is obtained from every Second Fiduciary. The Bank proposes an alternative which the Bank believes provides the basic safeguards for the Plans and is more efficient, cost effective, and administratively feasible than those contained in PTE 77–4.

In the event of an increase in the rate of any investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or an increase in the fees for Secondary Services paid by the Funds to the Bank over an existing rate that had been authorized by the Second Fiduciary, the Bank will provide, at least 30 days in advance of the implementation of such additional service or fee increase, to the Second Fiduciary of the Plans invested in such Fund a written notice of such additional service or fee increase, (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service or the nature and amount of the increase in fees). In this regard, such increase in fees for Secondary Services can result either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by the Bank for such fee over that which had been authorized by the Second Fiduciary of a Plan. The Bank believes that notice provided in this way will give the Second Fiduciary of each of the Plans adequate opportunity to decide whether or not to continue the authorization of a Plan's investment in any of the portfolios of the Funds in light of the increase in investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or the increase in fees for any Secondary Services. In addition, the Bank represents that such fee increase will be disclosed to the Second Fiduciaries in an amendment of or supplement to the Funds' prospectus or in the Funds' statement of additional information, to the extent necessary to comply with SEC disclosure requirements.[11]

[10] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Plans to assure that the fees paid by the Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

[11] An increase in the amount of a fee for an existing Secondary Service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established Secondary Service shall be considered an increase in the rate of such Secondary Fee. However, in the event a Secondary Fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the amount of such Secondary Fee, and such fee was waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee. However, reinstituting the fee at an amount greater than previously disclosed would necessitate the Bank providing notice of the fee increase and a Termination Form.

Authorization Requirements for the Second Fiduciary

6. The written notice of an additional service for which a fee is charged or a fee increase, as described in Representation 5, will be accompanied by a Termination Form, as defined in paragraph (i) of Section III, and by instructions on the use of such form, as described in paragraph (l) of Section II, which expressly provide an election to the Second Fiduciaries to terminate at will any prior authorizations without penalty to the Plans. The Second Fiduciary will be supplied with a Termination Form annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter, regardless of whether there have been any changes in the fees payable to the Bank or changes in other matters in connection with services rendered to the Funds. However, if the Termination Form has been provided to the Second Fiduciary in the event of an increase in the rate of any investment management fees, investment advisory fees, or similar fees, an addition of a Secondary Service for which a fee is charged, or an increase in any fees for Secondary Services paid by the Fund to the Bank, then such Termination Form need not be provided again to the Second Fiduciary until at least six months have elapsed, unless such Termination Form is required to be sent sooner as a result of another increase in any investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or an increase in any fees for Secondary Services.

The Termination Form will contain instructions regarding its use which will state expressly that the authorization is terminable at will by a Second Fiduciary, without penalty to any Plan, and that failure to return the form will be deemed to be an approval of the additional Secondary Service or the increase in the rate of any fees and will result in the continuation of all authorizations previously given by such Second Fiduciary. Termination by any Plan of authorization to invest in the Funds will be effected by the Bank redeeming the shares of the Fund held by the affected Plan by the close of business on the day following receipt by the Bank, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination. If, due to circumstances beyond the control of the Bank, the redemption cannot be executed within one business day, the Bank shall have one additional business day to complete such redemption.

The rates paid by each of the portfolios of the Funds to the Bank for services rendered may differ depending on the fee schedule for each portfolio and on the daily net assets in each portfolio. The investment advisory fees paid to the Bank by the Funds will be based on the different fee rates of each of the portfolios into which the assets of the Plans are allocated. For example, for services provided to the Equity Fund, the Bank receives from the Bishop Street Funds an annual fee of 0.40 percent based on the Fund's average daily net assets. For services provided to the High-Grade Income Fund, the Bank receives from the Bishop Street Funds an annual fee of 0.25 percent, based on the Fund's average daily net assets. The Bank proposes to allocate the assets of the Plans among the portfolios offered of the Bishop Street Funds and/or among any of the Funds under the terms of this proposed exemption.

The impact of the change in fee structures resulting from the exemptive transactions on the aggregate fees received by the Bank is difficult to determine, according to the applicant, because various factors and variables are unique to each Plan. These factors include the size of the Plan, the extent to which Plan assets are invested in the Funds, usage by the Plans of separate services provided by the Bank and the application of certain ''break points'' in the schedule of Plan-level fees. Further, the Bank notes that Fund size, the identity of the particular investment portfolio of the Fund into which the Plan assets are allocated and voluntary waivers by the Bank of Fund-level fees are likely to be different in each situation and may affect the aggregate amount of fees received by the Bank. In this regard, the Bank believes that, as to each individual Plan, the combined total of all Plan-level and Fund-level fees received by it for the provision of services to the Plans and to the Funds, respectively, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

Conditions for Exemption

7. If granted, this proposed exemption will be subject to the satisfaction of certain general conditions that will further protect the interests of the Plans. For example, the proposed transactions are subject to the prior authorization of a Second Fiduciary, acting on behalf of each of the Plans, who has been provided with full written disclosure by the Bank. The Second Fiduciary will generally be the administrator, sponsor, or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosure, the Second Fiduciary of such Plan will receive advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure).

On the basis of the information disclosed, the Second Fiduciary will authorize in writing the investment of assets of a Plan in shares of the Funds in connection with the transactions set forth herein and the compensation received by the Bank in connection with its services to the Funds. Written authorization will extend to only those investment portfolios of the Funds with respect to which the Plan has received the written disclosures referred to above and which are specifically mentioned in such disclosure described above. Having obtained the authorization of the Second Fiduciary, the Bank will invest the assets of a Plan among the portfolios and in the manner covered by the authorization, subject to satisfaction of the other terms and conditions of this proposed exemption. However, the Bank will not invest assets of a Plan in any portfolio not specifically mentioned in the written disclosure and authorization described above. For example, if the written authorization of the Second Fiduciary covered only one of the portfolios then existing, the Bank could only invest the assets of such Plans in that one portfolio specifically authorized. Further, if a new portfolio were established under any of the Funds, the Bank could invest assets of a Plan in such new portfolio only after providing the required disclosures and obtaining from the Second Fiduciary a separate written authorization which specifically mentions the new portfolio.

In addition to the disclosures provided to the Plan prior to investment in any of the Funds, the Bank represents that it will routinely provide at least annually to the Second Fiduciary updated prospectuses of the Funds in accordance with the requirements of the '40 Act and the SEC rules promulgated thereunder. Further, the Second Fiduciary will be supplied, upon request, with a report or statement (which may take the form of the most recent financial report of such Funds, the current statement of additional information, or some other written

statement) which contains a description of all fees paid by the Fund.

The Bank does not now execute nor in the future intend to execute securities brokerage transactions for the investment portfolios of any of the Funds, except as and to the extent permitted by the '40 Act and applicable rules of the SEC. However, in the event the Bank ever performs brokerage services for which a fee is paid to the Bank by the investment portfolio of any of the Funds, the Bank represents that it will at least 30 days in advance of the implementation of such additional service provide a written notice which explains the nature of such additional brokerage service and the amount of the fees. Further, the Bank represents that it will provide at least annually to the Second fiduciary of any Plan that invests in such Funds with a written disclosure indicating (a) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to the Bank by such Fund; (b) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to the Bank; (c) the average brokerage commissions per share, expressed as cents per share, paid to the Bank by each portfolio of a Fund; and (d) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to the Bank.

The receipt of fees, as described above, is generated in connection with the investment in the Funds by the Plans. These investments are the result of purchases of shares in the Funds and exchanges of assets of the Plans, including those in CIFs, for shares in the Funds.

With respect to such purchases, (a) the Plans and other investors will purchase or redeem shares in the Funds in accordance with standard procedures described in the prospectus for each portfolio of the Funds; (b) the Plans will pay no sales commissions or redemption fees in connection with purchase or redemption of shares in the Funds by the Plans; (c) the Bank will not purchase from or sell to any of the Plans shares of any of the Funds; and (d) the price paid or received by the Plans for shares of the Funds will be the net asset value per share at the time of such purchase or redemption and will be the same price as any other investor would have paid or received at that time. The value of the Bishop Street Funds' shares and the value of each Bishop Street Funds' portfolios are determined on a daily basis. In the case of the non-money market portfolios, assets are valued at fair or market value, as required by Rule 2a–4 under the '40 Act. In the case of any money market portfolio, the assets are valued based on the amortized cost method authorized by SEC Rule 2a–7, in order to maintain a net asset value of $1.00 per share. Both the money market portfolios and the non-money market portfolios determine the net asset value per share for purposes of pricing purchases and redemptions by dividing the value of all securities, determined by a method as set forth in the prospectus for each Bishop Street Fund portfolio, and other assets belonging to each of the portfolios, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

Purchases and redemptions of shares in any of the Funds by the Plans may also occur in connection with daily automated cash ''sweep'' arrangements. However, agreement to such arrangement is not a condition for the Plan otherwise choosing to invest in shares of the Fund, nor will the reverse be required.

Under the automated cash ''sweep'' arrangement, a Plan may participate in the ''sweep'' program only with the initial written approval of the Second Fiduciary and only after certain disclosures have been provided by the Bank. If such approval is given, cash balances of the Plan held from time to time thereafter pending other investment or distribution are invested automatically in shares of the Bishop Street Funds Money Market Fund or other short-term investment vehicle selected by the Second Fiduciary on behalf of a Plan. The automated cash ''sweep'' arrangement would not involve shares of any non-money market portfolios.

After the Money Market Fund of the Bishop Street Funds has been selected by the Second Fiduciary on behalf of the Plan, otherwise uninvested cash down to the last $1.00 balance of the Plans may be invested automatically on a nightly basis. The Bank has no discretion with respect to the timing of the ''sweep'' either into or out of the Bishop Street Funds. Under the automated ''sweep'' arrangement, the Bank's computerized cash management system automatically scans the accounts of the Plans, as of the end of each business day to determine whether such accounts have positive or negative net cash balances. Based on this information, the system automatically invests the case of the Plans having positive balances in shares of the Money Market Fund. In the case of a Plan having a negative cash balance, the system automatically liquidates the Bishop Street Fund shares as necessary to eliminate such negative balance.

Plans may terminate their participation in the automated cash ''sweep'' arrangement and withdraw at any time by notifying the Bank. Such termination will be effected by the Bank redeeming the shares of the Bishop Street Funds held by the Plan requesting termination by the close of the business day following the date of receipt by the Bank, either by mail, hand delivery, facsimile, or other available means of written communication at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination. However, if due to circumstances beyond the control of the Bank, the redemption of shares of such Plan cannot be executed within one business day, the Bank would complete the redemption within one additional business day.

No fee, charge or penalty of any kind is charged in connection with a termination by a Plan of participation in the automated cash ''sweep arrangement'' in the Bishop Street Funds or in any of the Funds. The Bank currently charges a Plan-level cash sweep fee for sweep services in connection with the investment of cash balances in short-term investment vehicles managed by unaffiliated entities. This fee will be terminated for Plans that elect to use the Money Market Fund as their cash management vehicle. The Bank does not charge separate or additional fees to Plans in order to participate in the daily automated cash ''sweep'' arrangement through the Bishop Street Funds, nor is such additional compensation contemplated by the proposed exemption.[12]

[12] The Department in a letter, dated August 1, 1986, to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, addressed the application of section 408(b)(2) of the Act to arrangements involving ''sweep services.'' In that letter, the Department set forth several examples to illustrate various circumstances under which violations of section 406(b) of the Act would arise with respect to such arrangements. Conversely, the letter provided that, if a bank provides ''sweep'' services without the receipt of additional compensation or other consideration (other than reimbursement of direct expenses properly and actually incurred in the performance of such services), then the provision of ''sweep'' services by the bank would not, in itself, constitute a violation of section 406(b) of the Act. Moreover, including ''sweep'' services under a single fee arrangement for investment management services which is calculated as a percentage of the market value of the total assets under management would not, in itself, constitute an act described in section 406(b)(1), because the bank would not be exercising its fiduciary authority or control to cause a plan to pay an additional fee.

In addition, the letter also discusses the applicability of the statutory exemptions under

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Neither the Plans nor the CIFs will pay sales commissions or redemption fees in connection with the in-kind transfer of assets to the Funds in exchange for shares of the Funds or in connection with purchases or redemptions by the Plans of shares of the Funds, including purchases and redemptions handled through daily automated cash ''sweep'' arrangements.

(b) The Plans or the CIFs will receive shares of the Funds that are equal in value to the assets of the Plans or the CIFs exchanged for such shares, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a–7 under the '40 Act, as amended from time to time or any successor rule, regulation or similar pronouncement.

(c) Not later than 30 business days after completion of each in-kind transfer of assets in exchange for shares of the Funds, the Plans will receive written confirmation of the assets involved in the exchange which were valued in accordance with Rule 17a–7(b)(4), the price of such assets and the identity of the pricing service or market maker consulted.

(d) No later than 90 days after completion of each in-kind transfer of assets of the plans or the CIFs in exchange for shares of the Funds, the Bank will mail to the Second Fiduciary of each Plan, a written confirmation of the number of CIF units held by each affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred), and the number of shares in the Funds that are held by each affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(e) The price that will be paid or received by the Plans for shares in the Funds is the net asset value per share at the time of the transaction and is the same price for the shares which would have been paid or received by any other investor for shares of the same class at that time.

(f) Neither the Bank nor an affiliate, including any officer or director will purchase from or sell to any of the Plans shares of any of the Funds.

(g) As to each individual Plan, the combined total of all fees received by the Bank for the provision of services to the Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(h) The Bank will not receive any 12b–1 Fees in connection with the proposed transactions.

(i) Prior to investment by a Plan in any of the Funds, in connection with transactions, the Second Fiduciary will receive a full and detailed written disclosure of information concerning such Fund.

(j) Subsequent to the investment by a Plan in any of the Funds, the Bank will provide the Plan, among other information, at least annually with an updated copy of the prospectus for each of the Funds in which the Plan invests.

(k) In the event such Fund places brokerage transactions with the Bank, the Bank will provide the Second Fiduciary of such Plan at least annually with a statement specifying the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to the Bank and to unrelated brokerage firms and the average brokerage commissions per share, expressed as cents per share, by each portfolio of a Fund paid to the Bank and to brokerage firms unrelated to the Bank.

(l) On the basis of the disclosures, the Second Fiduciary will authorize the transactions.

(m) The authorization by the Second Fiduciary will be terminable at will without penalty to such Plans, and any such termination will be effected by the close of the business day following the date of receipt by the Bank, either by mail, hand delivery, facsimile or other available means of written communication at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination, unless due to circumstances beyond the control of the Bank delay execution for no more than one additional business day.

(n) The Plans do not pay investment management, investment advisory or similar fees to the Bank with respect to any of the assets of such Plans which are invested in shares of any of the Funds.

(o) The Second Fiduciary will receive a written notice accompanied by the Termination Form with instructions regarding the use of such form, at least 30 days in advance of the implementation of any increase in the rate of any fees for investment management, investment advisory or similar fees, any addition of a Secondary Service for which a fee is charged, or any increase in fees for Secondary Services that the Bank provides to the Funds.

(p) All dealings between the Plans and any of the Funds will be on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same shares of the same class as the Plans.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of

section 408(b)(6) of the Act (fees for ''ancillary services'') and under section 408(b)(8) of the Act (investments in collective trust funds maintained by such bank) to such ''sweep'' service arrangements.

the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 8th day of September, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–22753 Filed 9–12–95; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 95–81; Exemption Application Nos. D–09511, D–09512 and D–09513, et al.]

Grant of Individual Exemptions; Bank of America Illinois, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bank of America Illinois, Located in Chicago, IL

[Prohibited Transaction Exemption 95–81 Exemption Application Nos. D–09511, D–09512 and D–09513]

Exemption

Section I—Exemption for Purchases and Sales

Effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase and sale by employee benefit plans (the Plans), to which the Bank serves as fiduciary, of shares in the Prime Fund, the Government Securities Fund, and the Treasury Fund, or each of their Pacific Horizon Fund successors, three open-end money market mutual fund portfolios (collectively referred to as the Funds), to which the Bank of America Illinois, and its affiliates (the Bank) provide investment advisory and other services, in connection with the Supplemental Sweep Service (as defined in paragraph (b) of section IV below), provided that the conditions of Section III are met.

Section II—Exemption for Receipt of Fees

Effective September 1, 1993, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the receipt of fees by the Bank from the Funds for providing investment advisory and other services to the Funds, in connection with the investment of the assets of the Plans in the Funds, for which the Bank provides investment advisory and other services, provided that the conditions of Section III are met.

Section III—Conditions

(a) The Bank does not have investment discretion or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the Plan assets invested in the Funds pursuant to this exemption.

(b) No sales commissions or redemption fees are paid by the Plans in connection with the purchase or sale of shares in the Funds.

(c) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the Investment Company Act of 1940 (the 12b–1 Fees) in connection with the transactions.

(d) The price paid or received by a Plan for shares in a Fund is the net asset value per share on the date of the transaction, as defined in section IV(d), and is the same price which would have been paid or received for the shares by any other investor on that date.

(e) Prior to the Bank's receipt of fees paid by each Fund with respect to Plan assets invested therein, each Plan receives a credit of such Plan's proportionate share of all fees charged to the Fund by the Bank.

(f) The Plans are not employee benefit plans sponsored or maintained by the Bank.

(g) A second fiduciary who is independent of and unrelated to the Bank or any of its affiliates (the Second Fiduciary), receives full written disclosure of information concerning the Fund(s), including but not limited to:

(1) A current prospectus for each fund in which a Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, and all other fees to be charged to or paid by the Plan or the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reason why the Bank may consider such investment to be appropriate for the Plan; and

(4) Upon request of the Second fiduciary, a copy of the proposed exemption and/or a copy of the final exemption;

(h) On the basis of the information described above in paragraph (g) of section III, the Second Fiduciary authorizes in writing the investment of assets of the Plan in each particular Fund, the fees to be paid by the Fund and the Plan to the Bank, and the credit to the Plan of fees received by the Bank

from the Funds for investment advisory and other services, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by part 4 of Title I of the Act.

(i) The Second Fiduciary referred to in paragraph (g) of section III, or any successor thereto, is notified of any change in the rates of the fees referred to in paragraph (g) of section III and approves in writing the continued holding of any Fund shares acquired by the Plan prior to such change and still held by the Plan.

(j) The Bank provides annually, written disclosures to the Second Fiduciary which are provided to all shareholders of the Fund(s), which establish the rate of return of the Fund(s) absent the credit paid to the Plans for fees paid by the Funds to the Bank.

(k) The combined total of all fees received by the Bank for the provision of services to the Plans, and in connection with the provision of services to any of the Funds in which the Plans may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(l) All dealings between the Plans and the Funds are on a basis no less favorable to the Plans than dealings between the Funds and other shareholders of the Funds.

(m) The Bank shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) below to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not available for examination as required by section (n) below;

(n)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (l) above shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the interests of the Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan that has an interest in any of the Funds or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any Plan that has an interest in the Funds or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (n)(1)(B) through (D) shall be authorized to examine the trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section IV—Definitions

For purposes of this proposed exemption:

(a) Pacific Horizon Fund successor means each of the open-end money market mutual funds resulting from the merger of the Pacific Horizon Prime Fund and the Pacific Horizon Treasury Fund respectively with the Prime Fund and the Treasury Fund. In addition, Pacific Horizon Fund successor means the open-end money market mutual fund resulting from the merger of the Government Securities Fund with a similar money market mutual fund among the Pacific Horizon Funds.

(b) Supplemental Sweep Service means the transfer of shares in the Funds between the Bank and the Plans by means of the Banks's internal accounting procedures at the end of the Supplemental Sweep Period, in connection with Plan orders to purchase shares in the Funds that the Bank is otherwise unable to settle prior to the Supplemental Sweep Period, and Plan orders to purchase or redeem shares in the Funds that are received by the Bank during the Supplemental Sweep Period. A Plan order to purchase or redeem shares in the Fund(s) pursuant to the Supplemental Sweep Service occurs solely as a result of investment decisions, deposits or withdrawals, directed by an independent Second Fiduciary.

(c) Supplemental Sweep Period means the period of time on each business day after the Funds stop accepting orders for the purchase or redemption of shares in the Funds and before the Bank's close of business.

(d) The term ''net asset value'' means the amount for purposes of pricing all purchase and sale of shares in the Funds calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or fund, by the number of outstanding shares.

(e) An ''affiliate'' of a person includes:

(1) Any persons directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control, with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(f) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(g) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(h) A fiduciary will not be deemed to be an independent fiduciary with respect to the Bank and its affiliates if:

(1) The fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank or any affiliate:

(2) The fiduciary, or any officer, director, partner, employee or relative of such fiduciary, is an officer, director partner, or employee of the Bank or any affiliate (or is a relative of such persons); or

(3) The fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of the Bank (or a relative of such person), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/adviser, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in sections I and II above, then paragraph (h)(2) of section III above, shall not apply.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 30 days of the date of publication of the Notice in the **Federal Register** on April 7, 1995.

During the comment period, the Department received no requests for a hearing. However, the Department received a comment letter and subsequent clarifications, dated May 18, August 2, and August 4, 1995 from the Bank.

First, the Bank states that item 8 of the Summary of Facts and Representations in the Notice indicates that the books of the Fund's transfer agent carry only one account for all purchases and redemptions of Fund shares by the Bank. The Bank represents that it is possible in the future that, solely for bookkeeping purposes, the transfer agent may record separate accounts in the Bank's name to reflect orders from different Bank departments or divisions, or for other purposes, such as reflecting the Bank's own provisional accounts. Nonetheless, all such shares would be held in the name of the Bank. The Department concurs.

Second, the Bank notes a typographical error in the **Federal Register** at page 17812: the reference to the Bank's cash management fee reads ''12'' percent rather than ''0.12 percent.'' The Department concurs.

Third, the Bank states that the Prime Fund and the Treasury Fund may be respectively merged into the Pacific Horizon Prime Fund and the Pacific Horizon Treasury Fund, which are money market mutual funds with respect to which a BAI affiliate serves as investment adviser. In addition, although the Government Securities Fund has not been used as a cash management vehicle for any plan to date, it may be merged into a similar money market mutual fund among the Pacific Horizon Funds which is also advised by a BAI affiliate. Further, the Bank represents that the prior representations regarding the Prime Fund, the Treasury Fund and the Government Securities Fund will remain accurate with respect to the Pacific Horizon Fund successors. In this regard, the Bank has requested that relief be extended to the Pacific Horizon Funds which succeed the Prime Fund, the Treasury Fund and the Government Securities Fund. The Department concurs.

After giving full consideration to the record, including the comments by the Bank, the Department has determined to grant the exemption as described herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5507, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption published refer to the notice of proposed exemption published Friday April 7, 1995, at 60 FR 17809.

FOR FURTHER INFORMATION CONTACT: Eric Berger of the Department, telephone (202) 219–8971 (This is not a toll-free number).

PMS Profit Sharing and Retirement Savings Plan and Trust (the Plan), Located in Cleveland, Ohio

[Prohibited Transaction Exemption 95–82; Exemption Application No. D–09824]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale (the Sale) of a certain parcel of improved real property (the Property) from the Plan to M. A. Hanna Company (Hanna), a party in interest with respect to the Plan provided that the following conditions are met:

(1) The fair market value of the Property is established by a qualified and independent real estate appraiser;

(2) Hanna pays the greater of $990,800 or the current fair market value of the Property;

(3) The Sale is a one time transaction for cash;

(4) The Plan pays no fees or commissions related to the Sale; and

(5) Hanna pays any excise taxes to the Internal Revenue Service owed pursuant to section 4975(a) of the Code resulting from Hanna's lease of the Property from the Plan through the effective date of the final grant of the exemption within 90 days of such date.

Effective Date: This exemption will be effective as of September 1, 1995.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on July 12, 1995 at 60 FR 35941.

Written Comments: With respect to the notice of proposed exemption, the Department received one comment in which the applicant requests that the exemption be effective September 1, 1995. The Department has modified the final exemption accordingly in response to the comment.

For Further Information Contact: Allison Padams, of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Mercury Asset Management International Ltd. (Mercury International) Located in London, England

[Prohibited Transaction Exemption 95–83; Exemption Application No. D–09998]

Exemption

The restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the proposed cross-trading of securities between various accounts managed by Mercury International or its Affiliates (the Accounts) where at least one Account involved in any cross-trade is an employee benefit plan account (Plan Account) for which Mercury International acts as a fiduciary; provided that both the General Conditions of Section I and the Specific Conditions of Section II below are met.

Section I—General Conditions

(a) Each employee benefit plan comprising a Plan Account participating in Mercury International's cross-trading program has total assets equal to at least $25 million. In the case of multiple employee benefit plans maintained by a single employer or controlled group of employers, the $25 million requirement may be met by aggregating the assets of such plans if the assets are commingled for investment purposes in a single master trust.

(b) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a qualified Plan Fiduciary which is independent of Mercury International and its Affiliates (the Independent Fiduciary).

(c) The authorization referred to in paragraph (b) above is terminable at will without penalty to the Plan Account, upon receipt by Mercury International of written notice of termination.

(d) Before an authorization is made for any Plan Account, the Independent Fiduciary is furnished with any reasonably available information necessary for the Independent Fiduciary

to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, a description of Mercury International's cross-trade practices, and any other reasonably available information regarding the matter that the Independent Fiduciary requests.

(e) Each cross-trade transaction involves only equity or debt securities for which there is a generally recognized market. With respect to any non-U.S. securities, only those securities traded on a recognized foreign securities exchange for which market quotations are readily available shall be covered by the exemption.[1]

(f) Each cross-trade transaction is effected at the current market value for the security on the date of the transactions. For equity securities, this shall be the closing price for the security on the date of the transaction. The ''closing price'' shall be the last trade price on exchanges where dealing is order-driven and the closing mid-market price (i.e. the average of the closing bid and offer prices) where dealing is quote-driven. For debt securities, the current market value shall be the fair market value determined in accordance with paragraph (b) of Rule 17a–7 issued by the Securities and Exchange Commission under the Investment Company Act of 1940.

(g) Neither Mercury International nor its Affiliates charges a Plan Account affected by a cross-trade transaction any fee or commission for such transaction.

(h) At least every three months, and not later than 45 days following the period to which it relates, Mercury International furnishes the Independent Fiduciary with a report disclosing: (1) a list of all cross-trade transactions engaged in on behalf of the Plan Account, and (2) with respect to each cross-trade transaction, the prices at which the securities involved in the transaction were traded on the date of such transaction.

(i) The Independent Fiduciary is furnished with a summary of certain additional information at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (1) a description of the total amount of the Plan Account's assets involved in cross-trade transactions during the period, (2) a description of Mercury International's cross-trade practices, if such practices have changed materially during the period covered by the summary, (3) a statement that the Independent Fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Mercury International of written notice to that effect, and (4) a statement that the Independent Fiduciary's authorization of the Plan Account's participation in the cross-trade program will continue in effect unless it is terminated.

(j) For all Accounts participating in the cross-trading program, if the number of shares of a particular security which any Accounts need to sell on a given day is less than the number of shares of such security which any Accounts need to buy, or vice versa, the direct cross-trade opportunity is allocated among the buying or selling Accounts on a pro rata basis.

(k) The Accounts involved in cross-trade transactions do not include assets of any Plan established or maintained by Mercury International or its Affiliates.

Section II—Specific Conditions

(a) An Independent Fiduciary of each Plan specifically authorizes each cross-trade transaction in accordance with the following procedure:

(1) No more than three business days prior to the execution of any cross-trade transaction, Mercury International shall inform an Independent Fiduciary of each Plan Account involved in the cross-trade transaction that Mercury International proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available, the current trading price for such securities, and the total number of shares to be acquired or sold by each such Plan Account;

(2) Prior to each cross-trade transaction, the transaction shall be authorized either orally or in writing by the Independent Fiduciary of each Plan Account involved in the cross-trade transaction;

(3) If a cross-trade transaction is authorized orally by an Independent Fiduciary, Mercury International shall provide written confirmation of such authorization in a manner reasonably calculated to be received by such Independent Fiduciary within one business day from the date of such authorization;

(4) The authorization referred to in this Section II shall be effective for a period of three business days; and

(5) No more than ten days after the completion of a cross-trade transaction, the Independent Fiduciary shall be provided with a written confirmation of the transaction and the price at which the transaction was executed.

(b) A cross-trade transaction is effected only where the transaction involves less than five (5) percent of the aggregate average daily trading volume for the securities involved in the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express authorization of Independent Fiduciaries on behalf of Plan Accounts affected by the transaction, prior to the execution of the cross-trade.

(c) The cross-trade transaction is effected at a price which is within ten (10) percent of the closing price of the security on the day before the date on which Mercury International received authorization by the Independent Fiduciary to engage in the cross-trade transaction.

Section III—Definitions

For purposes of this exemption:

(a) ''Account'' means a Plan Account or Non-Plan Account;

(b) ''Affiliate'' means any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Mercury International;

(c) ''Buying Account'' means the Account which seeks to purchase securities in a cross-trade transaction;

(d) ''Cross-trade transaction'' means a purchase and sale of securities between Accounts for which Mercury International or an Affiliate is acting as investment manager;

(e) ''Plan Account'' means an Account managed by Mercury International consisting of assets of one or more employee benefit plans which are subject to the Act;

(f) ''Non-Plan Account'' means an Account managed by Mercury International consisting of assets of clients which are not employee benefit plans subject to the Act; and

(g) ''Selling Account'' means the Account which seeks to sell its securities in a cross-trade transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Proposal) published on June 15, 1995, at 60 FR 31517.

[1] With respect to all non-U.S. securities that are ''plan assets'' managed by Mercury International or an Affiliate, the applicant represents that the requirements of section 404(b) of the Act and the regulations thereunder will be met (see 29 CFR 2550.404b–1). In this regard, section 404(b) of the Act states that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, except as authorized by regulation by the Secretary of Labor. The Department is providing no opinion herein as to whether such requirements will be met.

Written Comments and Modifications: The applicant submitted a comment letter on the Proposal to inform the Department regarding changes in the corporate structure of S.G. Warburg Group plc (the Warburg Group). In this regard, the Proposal was published for Warburg Investment Management International Ltd. (Warburg International) and its Affiliates.

The applicant states that at the time of the Proposal, Warburg International was a wholly-owned subsidiary of Mercury Asset Management plc, which was a wholly-owned subsidiary of Mercury Asset Management Group plc (MAM Group). At such time, MAM Group was 75% owned by the Warburg Group and 25% owned by the public. MAM Group is a public company listed on the London Stock Exchange with its own independent board of directors.

The applicant represents that on July 2, 1995, the investment banking business of the Warburg Group was acquired by Swiss Bank Corporation Investment Banking Ltd. (SBCI), a wholly-owned subsidiary of Swiss Banking Corporation. However, the applicant states that the MAM Group was not one of the companies within the Warburg Group that was acquired by SBCI. Following completion of the sale of the Warburg Group's investment banking business to SBCI, a reconstruction of the Warburg Group took place whereby MAM Group became an independent company and all of its shares became owned entirely by the public. The applicant states that the 75% holding of MAM Group owned by the Warburg Group was distributed to the current shareholders of the Warburg Group.[2] As a result, the MAM Group became fully independent of the Warburg Group as of July 26, 1995.

The applicant represents further that part of the terms of the sale of the Warburg Group's investment banking business to SBCI required that companies within the MAM Group can no longer trade under the ''Warburg'' name. Therefore, on July 27, 1995, the name of ''Warburg Investment Management International Ltd'' was changed to ''Mercury Asset Management International, Ltd''. The applicant states that there have been no other changes in the MAM Group and its subsidiaries as a result of the reorganization.

In response to the applicant's additional information, the Department has modified the Proposal by deleting references made to ''Warburg International'' and has substituted therefor the name ''Mercury International''. The Department notes that the exemption would apply only to Mercury International and its Affiliates, as defined in Section III(b), and not to any of the other companies formerly within the Warburg Group that were sold to SBCI.

No other comments, and no requests for a hearing, were made on the Proposal.

Accordingly, the Department has determined to grant the proposed exemption as modified.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

LEGENT Retirement Security Plan (the Plan) Located in Pittsburgh, PA

[Prohibited Transaction Exemption 95–84; Exemption Application No. D–10015]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of a limited partnership interest in BPT Union City Associates, Inc. (the BPT Interest) to LEGENT Corporation, a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (1) all terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price which is not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost plus opportunity costs attributable to the BPT Interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 29, 1995 at 60 FR 33870.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 8th day of September 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–22752 Filed 9–12–95; 8:45 am]

BILLING CODE 4510–29–P

[2] The details of transaction are described as follows: Under a Scheme of Arrangement (a form of reorganization under English law the terms of which are approved by an English court), the MAM Group allotted new ordinary shares, equivalent to the shares held by the Warburg Group, to the current ordinary and deferred shareholders of the Warburg Group on a pro rata basis. The 75% holding of ordinary MAM Group shares held by the Warburg Group was then converted to deferred MAM Group shares, which were purchased by the MAM Group and cancelled, as required under English law.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Federal Advisory Committee on International Exhibitions Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on September 28, 1995, from 9:00 a.m. to 5:30 p.m. This meeting will be held in Room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Portions of this meeting will be open to the public from 9:00 a.m. to 9:15 a.m. for welcome and introductions and from 4:45 p.m. to 5:30 p.m. for a policy discussion.

The remaining portion of this meeting from 9:15 a.m. to 4:45 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY-TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5533.

Dated: September 7, 1995.

Yvonne M. Sabine,

Director, Office of Council and Panel Operations National Endowment for the Arts.

[FR Doc. 95–22648 Filed 9–12–95; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Florida Power Corporation, (licensee) for an amendment to Facility Operating License No. DPR–72 issued to the licensee for operation of the Crystal River Nuclear Generating Plant, Unit No. 3, located in Citrus County, Florida. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on November 14, 1990 (55 FR 47570).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to add a limiting condition for operation for new low temperature overpressure protection (LTOP) and to revise the reactor coolant system (RCS) heatup and cooldown pressure-temperature (PT) operating limits for operation up to 15 effective-full-power-years. On February 7, 1991, by Amendment No. 133, the NRC staff approved RCS heatup and cooldown PT curves for operation up to 15 effective-full-power-years. Amendment No. 133 did not address the licensee's proposed TS changes for LTOP, which is the subject of this notice.

The NRC staff has concluded that the licensee's request for LTOP TS changes cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated August 31, 1995.

By October 13, 1995, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene. A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to A.H. Stephens, General Counsel, Florida Power Corporation, MAC–A5D, P.O. Box 14042, St. Petersburg, Florida 33733, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated October 31, 1989, as supplemented August 10, 1990, and (2) the Commission's letter to the licensee dated August 31, 1995.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 31st day of August 1995.

For the Nuclear Regulatory Commission.

David B. Matthews,

Project Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–22703 Filed 9–12–95; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 18, 1995, through August 30, 1995. The last biweekly notice was published on Wednesday, August 30, 1995 (60 FR 45172).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 13, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: July 17, 1995

Description of amendment request: The requested change to Technical Specification (TS) section 3.8 would specify that the spent fuel building refueling filter fan and at least one containment purge fan shall be shown to operate within plus or minus 10 percent of the design flow.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:The proposed change to TS is to revise Section 3.8.2.c. This TS section currently states ''All filter system fans shall be shown to operate within [plus or minus] 10% of the design flow.'' The proposed requirements are as follows:

c.1 The Spent Fuel Building refueling filter fan shall be shown to operate within [plus or minus] 10% of the design flow.

c.2 At least one Containment purge filter fan shall be shown to operate within [plus or minus] 10% of the design flow and must be operable during core alterations or movement of irradiated fuel assemblies, or at least one automatic containment isolation valve in each line penetrating the containment which provides a direct path from the containment atmosphere to the outside atmosphere shall be securely closed.

This proposed change does not involve a significant hazards consideration for the following reasons.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change clarifies the operating requirements for the Containment purge and Spent Fuel Building refueling filter systems. This proposed change to the TS specifically delineates the fan filter systems required for refueling operations and does not change the physical operation of the filter systems. The affected systems are not involved in the initiation of any accident. The system response to previously analyzed accidents, including system flows and filter efficiencies will not be altered by the proposed change. These changes are enhancements to clarify existing TS requirements that will not increase the probability or consequences of a previously analyzed accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change merely clarifies the specific filter systems that are necessary to mitigate a fuel handling accident during core alterations or the movement of irradiated fuel assemblies and is consistent with the accident analysis in Section 15.7.4 of the Updated Final Safety Analysis Report (UFSAR). This proposed change does not involve the addition or modification of plant equipment, nor does it alter the design or operation of plant systems. Therefore, operation of the facility in accordance with the proposed TS change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change clarifies which filter systems that must be capable of mitigating a design basis fuel handling accident during core alterations or the movement of irradiated fuel assemblies and is consistent with the accident analysis in Section 15.7.4 of the UFSAR. The proposed change will not result in an increase in the Control Room or offsite radiation doses. The performance of the filtration systems, including adsorption efficiencies, will not change. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, SC 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, NC 27602

NRC Project Director: David B. Matthews

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: June 30, 1995

Description of amendment request: The proposed amendments would modify the emergency diesel generator testing requirements in the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of occurrence of any accident previously evaluated.

The proposed changes to the Technical Specifications will change the scope of EDG [Emergency Diesel Generator] testing that is performed on a refueling cycle frequency. The proposed changes will eliminate the requirement to perform sequenced loading of the EDG as part of the hot restart test, and will allow the hot restart test to be initiated from any EDG start signal. The revised requirements will eliminate testing that is redundant, provides no additional meaningful information, significantly constrains scheduling of refueling outage maintenance and testing, and impacts the availability of systems and components important to safety. The proposed testing requirements satisfy the underlying purpose of the EDG hot restart test. The testing in accordance with the proposed requirements will verify the ability of each EDG to complete the start up sequence from an equilibrium temperature immediately following operation at full load for a period of time long enough to stabilize operating temperature.

A two hour period for operation at full load has been chosen to ensure that full load operating temperature has stabilized prior to shutdown preceding the hot restart test. Momentary transients outside the full load operating band of 3600 to 4000 kW will not invalidate the two hour run since momentary transient will not significantly affect operating temperature. Brief operation subsequent to a momentary transient will normalize operating temperature. Since the proposed changes impact only surveillance requirements used to periodically verify the operability of a required safety system, and since the proposed changes provide an

equivalent level of testing and eliminate redundant testing, the proposed changes will not impact the operability or availability of a required system.

Operation in accordance with the revised requirements will not increase the likelihood that a transient initiating event will occur since transients are initiated by equipment malfunction and/or catastrophic system failure. The revised requirements affect testing that is performed on a Refueling Cycle frequency. Testing in accordance with the proposed requirements will not increase the probability of failure of the EDGs since the testing will provide an equivalent level of testing to verify the operability of the EDGs. In addition, failure of an EDG to start or failure of an EDG while operating is not assumed to be an initiating event of an accident considered in the Updated Final Safety Analysis Report (UFSAR). Based on the above, operation in accordance with the proposed requirements will not significantly increase the probability of occurrence of any accident previously evaluated.

The proposed requirements will meet the underlying purposed of the existing testing requirements. The proposed testing will ensure the ability of the EDG to start from a hot condition in the unlikely event of an accident. The proposed changes will eliminate testing requirements that are redundant and unnecessarily challenge the reliability of the EDGs by requiring unnecessary wear and cycling of the diesel engine and auxiliary systems. Since the proposed changes will not adversely affect the operability or availability of the EDGs, the ability of the EDGs to operate and power equipment important to safety will not be impacted and the ability to mitigate the consequences of accidents previously evaluated will not be affected. Based on the preceding discussion, the consequences of accidents previously evaluated will not significantly increase.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not involve the addition of any new or different types of safety related equipment, nor do they involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the UFSAR. No safety related equipment or function will be altered as a result of the proposed changes. Also, the procedures that govern normal operation and recovery from an accident are not affected by the proposed changes.

The proposed changes will eliminate testing requirements that are redundant and provide no additional meaningful information. Testing in accordance with the revised requirements will provide an equivalent level of confidence in the reliability of the EDG systems to complete the start up sequence from a hot condition. The proposed testing requirements satisfy the purpose Regulatory Guide 1.108 in that the testing requirements will ensure EDG operability and reliability. In addition, the proposed changes are consistent with the changes recommended by the NRC in Generic Letter 93-05. Since no new failure modes or mechanisms are introduced by the proposed changes, the possibility of a new or different kind of accident is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Plant safety margins are established through LCOs, limiting safety system settings, and safety limits specified in the Technical Specifications. There will be no changes to either the physical design of the plant or to any of these settings or limits as a result of the proposed changes. The proposed changes will eliminate testing requirements that are redundant and provide no additional information. Testing in accordance with the revised requirements will verify the ability of the EDGs to complete the start up sequence from a hot condition as is intended by the recommended testing in Regulatory Guide 1.108. In addition, the proposed changes are consistent with the changes recommended by the NRC in Generic Letter 93-05. Since the proposed changes will not impact the availability or operability of the EDGs to perform their intended function and since no LCOs, safety limits, or safety system settings are affected by the proposed changes, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, IL 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, IL 60603

NRC Project Director: Robert A. Capra

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications to allow rod misalignment of +/- 18 steps at or below 90% of rated thermal power. In addition, a change is proposed to the Limiting Condition for Operation range of rod travel from 228 to ''All Rods Out.'' The introduction of ''All Rods Out'' is consistent with Amendment 167/161 which approved the removal of Technical Specification 3.1.3.6, ''Rod Insertion Limit'' from the Technical Specifications and placement into the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed limits on rod misalignment do not increase the probability of an accident. The Technical Specifications' allowed increase in peaking factor limits as power is reduced accommodates an increase in rod misalignment of [plus or minus] 18 steps below 90% of RTP [rated thermal power]. The initial conditions remain unchanged from that assumed in the Updated Final Safety Analysis Report (UFSAR). Therefore, this proposed change poses no significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms or limiting single failure are introduced as a result of implementing the proposed rod misalignment criteria. The institution of the proposed rod misalignment criteria will have no adverse effect, nor does it challenge, the performance of any other safety related system. Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety. The margin of safety, as defined in the BASES for the Technical Specifications, is not significantly affected by the changes to the rod misalignment limit. The Technical Specifications' allowed increase in peaking factor limits as power is reduced accommodates an increase in rod misalignment of [plus or minus] 18 steps below 90% of RTP. The initial conditions remain unchanged from that assumed in the UFSAR. Since the peaking factor limits are not modified, the proposed change does not constitute a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications to delete the requirement to adjust the Nuclear Instrumentation System (NIS) downward when operating at less than 70% of rated thermal power (RTP).

At reduced power levels (i.e., less than 70% of RTP), calorimetric power measurement uncertainties are most influenced by the feedwater flow measurements, which have the potential for large flow uncertainties under low flow conditions. These calorimetric uncertainties create the potential for a non-conservative gain adjustment of the NIS when the NIS is adjusted downward to match calorimetric power at reduced power levels, and may result in a non-conservative NIS power level indication when operating at higher power levels. Inappropriate gain adjustments could cause the NIS Power Range High Neutron Flux trip to occur at power levels beyond that assumed in the plant safety analyses. The proposed changes would correct this situation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve any physical changes to the NIS. Implementation of the proposed change does not affect the probability of failure of the NIS and does not alter the method in which protection is afforded by the NIS for the reactor and primary system. Therefore, the proposed change does not result in an increase in the severity or consequences of any accident previously evaluated.

The proposed change in Technical Specifications to remove the requirement which could result in non-conservative gain adjustments of the NIS at reduced power levels (below 70% of RTP), will have no significant effect on the probability or consequences of licensing basis events; and the probability or consequences of an accident previously evaluated for Turkey Point has not been significantly increased. Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not result in a change in the method in which the NIS provides plant protection. No change is being made which alters the function of the NIS. Therefore, the proposed change does not create the possibility of a new or different kind of accident nor involve a reduction in a margin of safety as defined in the Safety Analysis Report.

The change in Technical Specifications associated with the removal of the requirement which could result in non-conservative gain adjustments of the NIS at reduced power levels (below 70% of RTP) will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

This change in Technical Specifications only affects the removal of the requirement which has the potential for non-conservative gain adjustments of the NIS at reduced power levels (below 70% of RTP); these changes do not alter the manner in which protection is afforded for the reactor and primary system. In addition, the fundamental process for implementation of the calorimetric power/NIS comparison remains the same.

The changes in Technical Specifications associated with the removal of the requirement, which could lead to non-conservative gain adjustments of the NIS at reduced power levels (below 70% of RTP), will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications (TS) to incorporate certain changes which are consistent with guidance provided by NUREG-1366 and NRC Generic Letter (GL) 93-05, ''Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation.'' The following proposed changes are requested:

(1) TS SR 4.1.3.1.2: Change the frequency interval for control rod movement test from monthly to quarterly.

(2) TS SR 4.6.5.1: Change the hydrogen monitor calibration from quarterly to each refueling interval, and the analog channel operational test from monthly to quarterly.

(3) TS SR Table 4.3-3: Change the analog channel functional test from monthly to quarterly for radiation monitors. Correct spelling of 'Radioactivity' in Item 1.a.

(4) TS SR 4.4.6.2.2: Increase the time allowed in COLD SHUTDOWN before leak testing the Reactor Coolant System (RCS) isolation valves is required, from 72 hours to 7 days.

(5) TS SR 4.10.1.2: Changes the requirement for a rod drop test prior to reducing SHUTDOWN MARGIN from ''within 24 hours'' to ''within 7 days''.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendments conform to the guidance given in Enclosure 1 of the NRC Generic Letter 93-05. The overall functional capabilities of the rod control system, RCS pressure isolation valves, the hydrogen monitoring system, and the radiation monitoring systems will not be modified by the proposed change. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

(1) Increasing the interval of control rod movement testing will reduce the possibility of testing-related reactor trips and dropped rods, and result in fewer challenges to safety systems and plant transients.

(2) Increasing the interval of hydrogen monitor calibration and operational tests will result in a reduction in equipment degradation and reduce a burdensome task on personnel resources.

(3) Increasing the interval of radiation monitor functional tests will result in less equipment degradation as well as reducing the potential for testing-related isolations of the control room, fuel handling building, auxiliary buildings, and various process lines.

(4) Increasing the time allowed in COLD SHUTDOWN prior to leak testing RCS isolation valves will permit plant personnel to focus on short notice outage recovery and minimize personnel radiation exposure. Since the methods and the acceptance criteria used for the leak test are not altered, increasing the time from 72 hours to 7 days will not significantly alter the associated risk.

(5) Increasing the time required to perform rod tests prior to reducing the SHUTDOWN MARGIN will result in only one rod drop test vice two following a refueling outage, which will in turn reduce plant transients and personnel resource requirements.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the proposed changes to the TS can not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the surveillance interval changes and clarifications, since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems are unchanged by the proposed amendments. The proposed changes to the TS which establish new or clarify old surveillance intervals consistent with the NRC Generic Letter 93-05 line-item improvement guidance do not significantly reduce any of the margins of safety even though the number of surveillances is decreased. These requested amendments are justified by the following reasoning from NUREG-1366:

(1) The surveillances could lead to plant transients which would challenge safety systems unnecessarily as in the cases of control rod movement tests and post-refueling rod drop tests.

(2) The surveillances result in the unnecessary wear to equipment as in the cases of the hydrogen and radiation monitor surveillances.

(3) The surveillance result in radiation exposure to plant personnel which is not justified by the safety significance of the surveillances as in the case of the time requirement for leak-testing RCS isolation valves when in COLD SHUTDOWN.

(4) The surveillances place an unnecessary burden on plant personnel because the time required is not justified by the safety significance of the surveillance, i.e. hydrogen monitor and post-refueling rod drop tests.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specification Administrative Controls Section 6.9.1.7 to reflect the use of the Westinghouse NOTRUMP model in the Small Break Loss-of-Coolant Accident (SBLOCA) analysis used in determining the K(z) curve contained in the Core Operating Limits Report (COLR). The following references would be added to Section 6.9.1.7 (COLR) of the Administrative Controls section of Turkey Point Units 3 and 4 TS: ≥WCAP-10054-P-A, (proprietary) and WCAP-10081-NP-A, (non-proprietary), ''Westinghouse Small Break ECCS Evaluation Model Using the NOTRUMP Code'', October, 1985.'' WCAP-10054-P-A Addendum 2, (proprietary), ''Addendum to the Westinghouse Small Break ECCS Evaluation Model Using the NOTRUMP Code: Safety Injection into the Broken Loop and COSI Condensation Model'', August, 1994.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The modification to the current Section 6.9.1.7 of the Administrative Controls section of the Turkey Point Technical Specifications to include the references to WCAP-10054-P-A, ''Small Break ECCS Evaluation Model Using the NOTRUMP Code'', and WCAP-10054-P-A Addendum 2 for the COSI model, does not involve an increase in the probability or consequences of an accident previously evaluated. This modification to the Technical Specification does not change the probability of occurrence previously evaluated.

This change does not affect the integrity of the fission product barriers utilized for mitigation of radiological dose consequences as a result of an accident. The addition of the new methodology used for Turkey Point uprating analysis does not change, degrade, or prevent the response of safety related mitigation systems to accident scenarios, as described in the Updated Final Safety Analysis Report (UFSAR) Chapter 14. Therefore, the licensee concluded that the probability or consequences of an accident previously evaluated are not increased.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The modification to the current Section 6.9.1.7 of the Administrative Controls section of the Turkey Point Technical Specifications to include the references to WCAP-10054-P-A, ''Small Break ECCS Evaluation Model Using the NOTRUMP Code'', and WCAP-10054-P-A Addendum 2 for the COSI model, will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new operating configuration is being imposed by the addition of the references to the Technical Specification. Therefore, no new failure modes or limiting single failures have been identified. The licensee concludes that no new or different kind of accidents from those previously evaluated have been created as a result of this revision.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The modification to the current Section 6.9.1.7 of the Administrative Controls section of the Turkey Point Technical Specifications to include the references for the Small Break ECCS Evaluation Model Using the NOTRUMP Code will not involve a reduction in the margin of safety. The SBLOCA analysis results show that the limits of 10 CFR 50.46 are maintained as follows. The new calculated value of worst-case PCT will be 1688°F, which is less than the limit of 2200°F. There is significant margin in the current SBLOCA analysis such that the total cladding oxidation limit of 17 percent will not be challenged. Further, the calculated total amount of hydrogen generated has been determined to remain less than 1 percent. The SBLOCA hydraulic forces are not affected by the K(z) curve and the licensee concludes that the core will remain amenable to cooling. Additionally, post-LOCA long term core cooling and hot leg switchover evaluations are not impacted by the K(z) curve. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 26, 1995.

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications to achieve consistency throughout these documents by (a) removing outdated material, (b) incorporating administrative clarifications and corrections, and (c) correcting typographical errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendments are purely administrative in nature. These amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the modified specifications can not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the administrative changes and clarifications, since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The modified specifications which correct administrative errors and clarify existing Technical Specification requirements do not significantly reduce any of the margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Attorney for licensee: J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 17, 1995

Description of amendment request: The proposed amendment would allow the containment to be opened after about 11 days following shutdown during refueling and would redefine the operability requirements for selected engineered safety feature systems such that these systems are only required to be operable during the calculated decay period. The proposed changes will not remove requirements for systems to mitigate potential vessel draindown events, will not remove requirements for systems required for decay heat removal, and will continue to require high water level over the vessel during fuel movement. Programs are in place to close the containment, if needed, to address shutdown risk concerns.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed limits on recently irradiated fuel is used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis. Because the equipment affected by the revised operational conditions is not considered an initiator to any previously analyzed accident, inoperability of the equipment cannot increase the probability of any previously evaluated accident.

The proposed applicability in conjunction with existing administrative controls on light loads, bounds the conditions of the current design basis fuel handling accident analysis. The analysis also concludes the limiting offsite radiological consequences are well within the acceptance criteria of NUREG 0800, Section 15.7.4 and GDC 19. The analysis is also conducted in a conservative manner containing margins in the calculation of mechanical analysis, iodine inventory and iodine decontamination factor. Each of these conservatisms will further decrease the consequences. Therefore, the proposed changes do not significantly increase the probability or consequences of any previously evaluated accident.

The proposed limits are used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. In addition, the changes to operation are consistent with previous limits -- only allowing increased flexibility after the radiological consequences are assured to remain within accepted limits. Therefore, these operational conditions are consistent with the design basis analysis. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previous analyzed.

The revised limits are used to establish operational conditions where specific activities represent situations where significant radioactive release can be postulated. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences are at or below the current RBS licensing limit. Safety margins and analytical conservatisms have been evaluated and are well understood. Conservative methods of analysis are maintained through the use of accepted methodology and benchmarking the proposed methods to previous analysis. Margins are retained to ensure that the analysis adequately bounds all postulated event scenarios. The proposed change only eliminates some excess conservatism from the analysis.

EOI has implemented NUMARC 91-06 guidelines for shutdown operations at RBS. Shutdown Operations Protection Plan and Primary-Secondary Containment Integrity procedures presently include guidance for closure of the containment hatch and other significant opening in containment, in addition to the requirements contained in the license and design basis. This additional protection will enhance the ability to limit offsite effects.

Acceptance limits for the fuel handling accident are provided in 10CFR100 with additional guidance provided in NUREG 0800, Section 15.7.4 Excess margin is the difference between the postulated doses and the corresponding licensing limit. In the

initial review of River Bend Station for operation (NUREG-0989, Section 15.7.4), the NRC accepted the design and analysis based on meeting the guideline dose limits of 10CFR100 and SRP 15.7.4. The proposed applicability continues to ensure that the whole-body and thyroid doses at the exclusion area and low population zone boundaries, as well as control room doses, are below the corresponding licensing limit. These margins are unchanged; therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005

NRC Project Director: William D. Beckner

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: June 20, 1995 (AEP:NRC:0692CX)

Description of amendment requests: The proposed amendments would remove the requirements for fire protection systems from the licenses and the Technical Specifications (T/S) in accordance with the provisions and guidance of Generic Letters (GL) 86-10, ''Implementation of Fire Protection Requirements,'' 88-12, ''Removal of Fire Protection Requirements from Technical Specifications,'' and 93-07, Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have evaluated the proposed T/S changes and have determined that the changes should involve no significant hazards consideration based on the criteria established in 10 CFR 50.92(c). Operation of CNP [Cook Nuclear Plant] in accordance with the proposed amendment will not satisfy any of the following criteria.

(a) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature, in that it moves the T/Ss portion of the Fire Protection Program from the T/Ss to the UFSAR [Updated Final Safety Analysis Report] and the implementing procedures. This is accomplished by referencing in the UFSAR and the documents which address the Fire Protection Program in greater detail. Thus, the proposed changes will not revise the requirements for fire protection equipment operability, testing, or inspection, but only moves the T/Ss portion of the Fire Protection Program to implementing procedures.

As fire protection requirements are only being relocated following the guidance of GLs 86-10, 88-12, and 93-07, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(b) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not involve any physical alteration of plant configurations, changes to setpoints, or operating parameters. [These] are administrative changes that retain the existing fire protection requirements and relocate these requirements from the T/S to the UFSAR; therefore, these changes do not create the possibility of a new or different kind of accident.

(c) Involve a significant reduction in a margin of safety.

The proposed changes follow guidance contained in GLs 86-10, 88-12, and 93-07 for incorporating the Fire Protection Program into the UFSAR. A license condition will be implemented that will require that no changes can be made to the Fire Protection Program that will adversely affect the ability to achieve or maintain safe shutdown in the event of a fire without prior NRC approval. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: August 23, 1995

Description of amendment request: The proposed amendment would revise Technical Specifications Section 3.8.1.1 and the Bases for Section 3/4.8. The proposed amendment would extend the Allowed Outage Time (AOT) for an Emergency Diesel Generator (EDG) from 72 hours to 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

... NNECO concludes that these changes do not involve a significant hazards consideration since the proposed change satisfies the criteria of 10 CFR 50.92(c). That is, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The EDGs supply backup power to the essential safety systems in the event of a Loss of Normal (offsite) Power. EDGs are not accident initiators. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

Although the EDGs provide backup power to components that help mitigate the consequences of accidents previously evaluated, the extension in the AOT does not affect any of the assumptions used in the deterministic evaluations of these accidents. Thus, this change will not increase the consequences of any accident previously analyzed.

The increase in the EDG AOT introduces the potential to increase the risk to the public since a longer time window provides an opportunity to perform additional preventive maintenance to the EDG while the plant is on-line. However, the extended AOT, by itself, does not necessarily increase risk. The increase in the risk depends on the total time during which an EDG was out of service and the other equipment that is concurrently out of service with the EDG. The total risk increase due to the EDG being out of service will not be significant since that risk increase is monitored and kept at acceptable levels in accordance with the risk monitor program.

Based on the above, the proposal to extend the AOT for the EDGs (Technical Specification 3.8.1) does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to extend the AOT for the EDGs (Technical Specification 3.8.1) does not alter the physical design, configuration, or method of operation of the plant. Therefore, the proposal does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed change to extend the AOT for the EDGs (Technical Specification 3.8.1) do not affect the Limiting Conditions for Operations or their bases. As a result, the deterministic analyses performed to establish the margin of safety are unaffected. Thus, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London, Connecticut

Date of amendment request: August 23, 1995

Description of amendment request: The proposed amendment would extend the Allowed Outage Time (AOT) for an inoperable Safety Injection Tank (SIT) from 1 hour to 24 hours, unless the SIT is inoperable due to either boron concentration not within its limits or an inoperable level or pressure instrument. For these two special cases, the proposed change extends the AOT for an inoperable SIT to 72 hours. In addition, the proposed amendment clarifies the completion times and conditions for action statements and the criteria for surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

... NNECO concludes that these changes do not involve a significant hazards consideration since the proposed change satisfies the criteria in 10 CFR 50.92(c). That is, the proposed changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The Safety Injection Tanks (SITs) are passive components in the Emergency Core Cooling System that mitigate the consequences of a Loss of Coolant Accident (LOCA). As such, the SITs are not accident initiators. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

The increase in the AOT has the potential to increase the risk if it becomes necessary to stay on-line longer than one (1) hour with an inoperable SIT. However, the estimated risk impact is negligible.

The SITs inject borated water into the reactor vessel (via the cold legs) during the blowdown phase of a large break LOCA. The introduction of the inventory of borated water from all four (4) SITs is needed to ensure adequate reflooding of the core (i.e., minimize core damage) until the Engineered Safety Feature (ESF) pumps can provide adequate core cooling. The SITs also provide makeup water for the Reactor Coolant System (RCS) for smaller break LOCAs. The extension of the AOT does not affect any of the assumptions used in the deterministic evaluations of these accidents. Thus, this change will not increase the consequences of any accident previously evaluated.

The increased AOT extension to 72 hours, based solely on instrumentation (level and pressure) malfunction, also does not involve a significant increase in the consequences of an accident previously evaluated as endorsed by the NRC in NUREG-1366, ''Improvements to Technical Specifications Surveillance Requirements.''

The modification to the completion times and the modification of the Surveillance Requirements for volumetric changes in the SIT as a result of addition from the Refueling Water Storage Tank (RWST) also do not involve a significant increase in the consequences of any accident previously evaluated by the NRC in NUREG-1432, ''Standard Technical Specifications for Combustion Engineering Plants.''

Based on the above, the proposed changes to extend the AOT for an inoperable SIT, clarify action statements, and modify the criteria for surveillance requirements, do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to extend the AOT for an inoperable SIT, clarify action statements, and modify the criteria for surveillance requirements, do not alter the physical design, configuration, or method of operation of the plant. Therefore, the proposal does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed changes to extend the AOT for an inoperable SIT, clarify action statements, and modify the criteria for surveillance requirements, do not affect the Limiting Conditions for Operations (LCOs) of the SITs or the bases of the LCOs. As a result, the deterministic analyses performed to establish the margin of safety are unaffected. Thus, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: May 4, 1995.

Description of amendment requests: The proposed amendments would revise the pressurizer and main steam safety valve lift setting tolerances from plus or minus 1% to plus or minus 3%, revise the Safety Limit curves and revise the Technical Specification Section 2 to conform to Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed changes increase the ''as-found'' setpoint tolerances for the Pressurizer Safety Valves and Main Steam Safety Valves from [plus or minus] 1% to [plus or minus] 3%. The proposed changes do not involve any hardware modifications to plant structures, systems, or components. Analyses have determined that the proposed changes do not significantly affect the structural integrity of either the Reactor Coolant System or the Main Steam system.

The proposed setpoint tolerance of [plus or minus] 3% was included in the assumptions for the performance of the reload safety evaluations for the current fuel cycles, PI1-17 and PI2-16, and subsequent Prairie Island fuel cycle analyses. These analyses concluded that the minimum acceptable DNBR [departure from nucleate boiling ratio] is maintained, over-pressure protection is maintained, LOCA [loss-of-coolant accident] acceptance criteria are met and offsite dose limits are not exceeded. These changes are consistent with the guidance provided by Section III and XI of the ASME [American Society of Mechanical Engineers] Code and Standard Technical Specifications.

The proposed change to Technical Specification Figure TS.2.1-1 does not affect any existing accident analyses. This revision ensures that the design bases and safety limits are accurately and appropriately reflected in the Technical Specifications and will ensure that plant operations are properly evaluated for DNBR encroachment.

Therefore, the probability or consequences of an accident previously evaluated are not affected by any of the proposed amendments.

2. The proposed amendment will not create the possibility of a new of different

kind of accident from any accident previously analyzed The lift setpoint the Pressurizer Safety Valves and Main Steam Safety Valves will be restored to [plus or minus] 1% following testing, thus the ''as-left'' setpoint tolerance for the Pressurizer Safety Valves and Main Steam Safety Valves are unchanged. Evaluations of plant normal operation, transient and accident conditions have been performed assuming these safety valve lift settings are [plus or minus] 3% of the nominal setpoint and demonstrated that new or different kinds of accidents are not created by the proposed changes.

The proposed changes to Technical Specification Figure TS.2.1-1 do not affect the design, function or operation of any Prairie Island structures, systems or components. The curves show the loci of points of reactor core differential temperature (an indication of thermal power), Reactor Coolant System pressure, and average temperature for which the minimum DNBR is not less than the safety analysis limit, that fuel centerline temperature remains below melting, that the average enthalpy in the hot leg is less than or equal to enthalpy of saturated liquid, or that the exit quality is within the limits defined by the applicable DNBR correlation. There are no new failure modes introduced by the proposed changes to the Figure. The changes conservatively adjust Figure TS.2.1-1 to current plant conditions and ensure that the design is accurately reflected and that the plant is operated in accordance with its design bases.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created [by] these amendments.

3. The proposed amendment will not involve a significant reduction in the margin of safety

The proposed changes to the safety valve lift setting tolerances are consistent with the guidance provided by Section III and XI of the ASME Code and Standard Technical Specifications. Analyses have demonstrated these valves will continue to perform their function of protecting their respective system from over-pressurization under all postulated transients and accidents. The changed setting tolerances do not cause a reduction in any other safety margin such as DNBR. SAFETY LIMIT curves are provided to define minimum allowable safety margin for plant steady state operation, normal operational transients and anticipated operational occurrences. The SAFETY LIMITs represent a design requirement for establishment of many of the RPS [reactor protection system] trip setpoints which prevent reactor conditions from approaching the SAFETY LIMITs. The proposed revision of the SAFETY LIMIT curves provide the minimum safety margins with somewhat more conservatism than previously included. No RPS trips setpoints are changed.

Therefore, a significant reduction in the margin of safety would not be involved with these amendments.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation [of] the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by Nuclear Regulatory Commission regulations in 10 CFR Part 50, Section 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, MN 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John N. Hannon

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 28, 1995

Description of amendment request: The proposed amendment would revise the 250 volt DC [direct current] profiles in Technical Specifications Surveillance 4.8.2.1 (d) (2c) to reflect the new load profile calculations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

[Final Safety Analysis Report] FSAR Section 8.3 states that the station batteries have sufficient capacity without the charger to independently supply the required loads for four hours. The Technical Specifications require that the batteries be surveilled to dummy loads which are greater than the design loads. The load profiles for the 250 VDC batteries were recalculated using discrete increments of time when the loads would be in use for each of five design basis events. The Technical Specification load profiles are a composite of the worst case loads for the events plus margin. The required ampere-hours for each battery using the new load profiles is less than the ampere-hours required using the existing load profiles. Therefore, since the load profiles envelop the actual loads on the batteries, the change to the 250 VDC battery load profiles does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the 250 VDC batteries have sufficient capacity to power the actual battery loads thus enabling them to perform their intended function. Any postulated accident resulting from this change is bounded by previous analysis. Therefore, the change to the 250 VDC battery load profiles does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The Class 1E 250 VDC batteries are required to have sufficient capacity and capability to ensure sufficient power is available to supply the safety related equipment for (1) the safe shutdown of the facilities and (2) the mitigation and control of accident conditions within the facilities. The proposed load profiles envelope the worst case loads plus margin.

The ampere-hours removed from the Class 1E 250 VDC batteries are less for the proposed load profiles than the existing load profiles. The ampere-hours available in the batteries after the batteries have supplies[d] the emergency loads for 4 hours are: [See table in subject application].

* * * * * * *

Engineering calculation shows that the Class 1E 250 VDC batteries maintain at least 210 VDC at the Class 1E 250 VDC MCCs while supplying the proposed loads, corrected for temperature and aging. Since the Class 1E 250 VDC circuits are designed to operate properly with a minimum of 210 VDC at the Class 1E MCCs, all the Class 1E emergency equipment supplied from the Class 1E batteries have sufficient voltage to operate for 4 hours after the loss of ac power.

The Class 1E 250 VDC batteries and Class 1E 250 VDC battery chargers have been sized using the proposed load profiles. The Engineering calculation shows that the 120 cell, 12 positive plates per cell battery banks are sufficient to supply the proposed load profiles, corrected for temperature and aging. The same calculation also shows that the Class 1E 250 VDC battery chargers have sufficient capacity to re-charge the batteries from the proposed emergency discharged conditions to the fully charged condition in 12 hours while continuing to supply the plant normal continuous loads.

Base upon the above discussion, the proposed changes to the Technical Specification load profiles do not reduce the margin of safety as defined in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and

Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: August 11, 1995

Description of amendment request: The proposed amendment would revise Susquehanna Unit 2 Technical Specification Table 3.3.7.5-1 as follows:a.

Revise Item ı13, Required Number of Channels from 1 to 2;b.

Revise Item ı13, Minimum Channel Operable from 0 to 1;c.

Delete Footnote ıı.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Reestablishing the channel operability values in Item ı13 of Technical Specification Table 3.3.7.5-1, and deleting footnote ıı, has no impact on the probability or consequences of an accident previously evaluated. The proposed change in the channel operability values is a return to the values which were reviewed as part of the licensing basis.

II. This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Reestablishing the channel operability values in Item ı13 of Technical Specification Table 3.3.7.5-1, and deleting footnote ıı, does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change in the channel operability values increases the required number of channels available for accident monitoring. There is no correlation between increasing the number of neutron flux accident monitoring channels available and the creation of accident scenarios.

III. This change does not involve a significant reduction in a margin of safety.

Reestablishing the channel operability values in Item ı13 of Technical Specification Table 3.3.7.5-1, and deleting footnote ıı, does not involve a reduction in a margin of safety. The proposed change increases the number of required channels from current levels, and restores the values to those which have historically been required. At the present time, the number of required channels is being administratively controlled at the proposed levels to ensure conservatism in operability.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: John F. Stolz

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: May 12, 1995

Description of amendment request: The proposed change would extend the surveillance test intervals for the emergency service water (ESW) system to support 24 month operating cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92 since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes increase the interval between ESW system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. These changes do not involve any physical changes to the plant, nor do they alter the typical way the ESW system functions. On-line testing will continue to assure equipment availability. The type of testing and the corrective actions required if the subject ESW surveillances fail remain the same. As such, the proposed changes create no new impacts on accidents previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes increase the interval between ESW system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not change the ability of the ESW system to provide heat removal for the ECCS [emergency core cooling system] components and other equipment essential to reactor shutdown. Past equipment performance and on-line testing indicate the longer test intervals will not degrade ESW equipment. No changes are proposed to the type of testing performed, only to the length of the surveillance interval. The proposed changes do not modify the design or operation of plant equipment, therefore, no new or different failure modes are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. involve a significant reduction in a margin of safety.

The proposed changes increase the interval between ESW system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not alter the configuration of the ESW system nor change the manner in which the ESW equipment functions. Past equipment performance and on-line testing indicate the longer test intervals will not degrade ESW equipment. Operation of the plant remains unchanged by the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, NY 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, NY 10019

NRC Project Director: Ledyard B. Marsh

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 15, 1995

Description of amendment request: The proposed change would extend the surveillance test intervals for the control rod system to support 24 month operating cycles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

11. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes increase the interval between control rod system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. These changes do not involve any physical changes to the plant, nor do they alter the way the control rod system functions. The type of testing and the corrective actions required if the subject control rod surveillances fail remain the same. As such, the proposed changes create no new impacts on accidents previously evaluated.

The reactivity margin - core loading test can be safely extended to accommodate the 24 month operating cycle. The calculation of reactivity margin takes into account the longer operating cycle.

The control rod scram time test can be safely extended to accommodate a 24 month operating cycle. Operating experience has indicated that control rod scram times do not significantly change over an operating cycle. Additional on-line testing provides adequate assurance of equipment operability.

The SDIV [Scram Discharge Instrument Volume] vent and drain valve operability test can be safely extended to accommodate a 24 month operating cycle. Evaluation of past surveillance performance and additional on-line testing assure valve operability. The operability of the mode switch and the reset switch is demonstrated during shutdowns.

Therefore, the proposed changes do not involve a significant increase in the probability and do not change the consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes increase the interval between control rod system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not change the ability of the control rod system to provide rapid reactivity control in order that no fuel damage results from any abnormal operating transient. Past equipment performance and on-line testing indicate the longer test intervals will not degrade control equipment. No changes are proposed to the type of testing performed, only to the surveillance interval length. The proposed changes do not modify the design or operation of plant equipment, therefore, no new or different failure modes are introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. involve a significant reduction in a margin of safety.

The proposed changes increase the interval between control rod system surveillance tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not alter the configuration of the control rod system nor change the manner in which the control rod system functions. Past equipment performance and on-line testing indicate the longer test intervals will not degrade control rod equipment. Operation of the plant remains unchanged by the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, NY 13126

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, NY 10019

NRC Project Director: Ledyard B. Marsh

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 21, 1995

Description of amendment request: The proposed changes would replace the title-specific list of members on the Plant Operating Review Committee (PORC) with a more general statement of membership requirements, similar to that used to define Safety Review Committee membership; expand the scope of disciplines represented on the PORC to include Nuclear Licensing and Quality Assurance; change several management position titles; and, make several editorial corrections to the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Replacing the title specific list of PORC members with a statement of membership requirements for the committee does not reduce the effectiveness of the committee to advise the Resident Manager (Site Executive Officer) on matters regarding nuclear safety.

The proposed title changes for the Chief Nuclear Officer, Site Executive Officer, Shift Manager, and Control Room Supervisor are changes in title only and do not affect the responsibilities, authority, qualification requirements, or reporting relationships of these positions.

The change proposed for Specification 6.12 is administrative in nature, reflecting a change previously approved elsewhere in Technical Specifications.

The Radiological and Environmental Services Manager title change proposed for Specification 6.11(A)2 is administrative in nature, reflecting a change previously approved elsewhere in Technical Specifications.

The remainder of proposed changes correct grammar or improve consistency in Technical Specification formatting and do not affect the meaning or intent of the specifications involved.

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92. The changes are administrative in nature and would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,

2. create the possibility of a new or different kind of accident from those previously evaluated, or

3. involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, NY 10019

NRC Project Director: Ledyard B. Marsh

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 27, 1995

Description of amendment request: The proposed change to the Technical Specifications (TS) would incorporate updated pressure vs. temperature operating limit curves contained in TS Figure 3.4.6.1-1 and revise TS Surveillance Requirement 4.4.6.1.3 based on implementation of Regulatory Guide 1.99, Rev. 2 in accordance with Generic Letter 88-11. The changes are a result of data obtained from the first set of specimen capsules removed during Refueling Outage 5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident [...] previously evaluated.

The proposed changes assure that the existing safety limits are not exceeded due to changing Reactor Vessel conditions. These changes reflect the latest material testing

results in accordance with 10CFR50, Appendix G. The proposed changes to the pressure and temperature limits do not increase the probability of nonductile failures. The proposed changes to the surveillance requirement and the associated changes to the Bases to include a commitment to the methodology of Regulatory Guide 1.99, Rev. 2 ensures that the most limiting Reactor Vessel material is used in the determination of the pressure-temperature operating limits.

Therefore, it may be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

No physical plant modifications or new operating configurations result from these changes. These changes do not adversely affect the design or operation of any system or component important to safety, rather they establish limits to assure that operations remain within acceptable safety boundaries.

Therefore, the possibility of a new or different kind of accident from any previously evaluated will not be created.

3. Will not involve a significant reduction in a margin of safety. Analysis of the capsule specimens has concluded that the Reactor Vessel has sufficient fracture toughness for continued safe operation, provided that operation remains within acceptable pressure-temperature limits. The revised pressure-temperature curves define these acceptable pressure-temperature limits during plant operation. The proposed changes maintain the existing margins of safety by modifying the operating limits based on the most limiting of the actual reference temperature shifts. This new limit considered analytical results of the capsule specimens, or a predicted shift considering the most limiting pressure vessel material. Changes to the Surveillance Requirement criteria and the associated Bases to include a commitment to the methodology contained in Regulatory Guide 1.99, Rev. 2 will ensure that the most limiting plate or beltline weld material will be utilized in the determination of the pressure-temperature limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: August 1, 1995

Description of amendment requests: The amendment request proposes to change Technical Specification (TS) 3/4.3.2, Table 3.3-3, ''Engineered Safety Features Actuation System Instrumentation.'' TS 3/4.3.2 includes the requirements for the minimum number of toxic gas isolation system (TGIS) trains operable. The TS change request is to extend the allowed TGIS outage times during replacement of TGIS instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Toxic Gas Isolation System (TGIS) is designed to monitor and mitigate the effects of toxic gas releases on control room habitability. TGIS unavailability is not a precursor to any accident previously evaluated in Chapter 15 of the San Onofre Updated Final Safety Analysis Report (UFSAR). A risk assessment of the TGIS instrumentation replacement activity was performed and found that the likelihood of a loss of control room habitability beyond that permitted by the Technical Specifications (TS) will not exceed 1E-6 over the duration of this TS change. In addition, a loss of control room habitability does not necessarily lead to an accident or core damage event. However, if a loss of control room habitability was conservatively assumed to lead to a core damage event, this increase in risk would still not constitute a significant increase in the consequences or probability of any accident previously evaluated since the increase is less than 3% of the average annual core damage risk from internal events as reported in the San Onofre Individual Plant Examination. Therefore, operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change extends the allowed outage times of the TGIS system. The change does not affect the design or operation of any other plant systems. An increase in TGIS unavailability is not a precursor to any accident previously evaluated in Chapter 15 of the San Onofre UFSAR. Therefore, operation of the facility in accordance with this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

During replacement of TGIS instrumentation a single channel of TGIS will be maintained operable except during periods when construction activity may result in spurious TGIS alarms. During these periods the control room will normally be isolated except for brief periods when the control room will be open to allow for air exchange or to allow for CREACUS equipment repair. These periods, when the control room is open without a TGIS channel available, will not exceed 54 hours during the entire period when this change is in effect. Operation with control room ventilation in the normal mode with a single channel of TGIS operable for 44 days and no TGIS channel available for up to 54 hours has been analyzed, and results in an increase in the probability of a loss of control room habitability which does not exceed 1E-6 over the duration of this TS change. Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, CA 92713

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, CA 91770

NRC Project Director: William H. Bateman

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 24, 1994, as supplemented July 21, 1995. The July 21, 1995, letter provides clarification information and did not change the scope of the October 24, 1994, letter, or the initial no significant hazards consideration determination.

Brief description of amendment: The proposed amendment would revise the TS to allow the relocation of TS 3/4.3.7.12, Area Temperature Monitoring; and the associated Bases in the TS to licensee-controlled documents.

Date of issuance: August 28, 1995

Effective date: August 28, 1995

Amendment No.: 62

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 23, 1994 (59 FR 60379) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, NC 27605

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 18, 1995, as supplemented May 31, 1995

Brief description of amendments: The amendments revise the frequency for conducting the Catawba Unit 2 Integrated Leak Rate Test (ILRT) from a nominal frequency of once per 40 months to less than or equal to 70 months. This also involves the granting of an exemption from the requirements of 10 CFR Part 50, Appendix J, which is addressed by separate correspondence.

Date of issuance: August 18, 1995

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 133 and 127

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32362) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 18, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, SC 29730

Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: April 26, 1995

Brief description of amendment: This amendment adds a requirement to Technical Specification (TS) 4.5.2.a to periodically verify that the High Head Safety Injection (HHSI) pump minimum flow valve, 2CHS*MOV373, is maintained open during plant operation in Modes 1, 2, and 3. Valve 2CHS*MOV373, must be maintained open to provide a minimum flowpath for the HHSI pumps thereby minimizing the likelihood of HHSI pump damage due to pump operation with insufficient flow. The amendment allows flexibility for local verification of valve position or flow indication if the control room indication is not available. Several editorial changes to TS 3/4.5.2 are also being made to provide consistent format with other TSs.

Date of issuance: August 25, 1995

Effective date: August 25, 1995

Amendment No.: 73

Facility Operating License No. NPF-73: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29874). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of application for amendment: April 14, 1995, as supplemented by letters dated June 22 and July 18, 1995

Brief description of amendment: The amendment eliminates response time testing (RTT) requirements for selected sensors and specific loop instrumentations for (1) the Reactor Protection System (RPS), (2) the Isolation System, and (3) the Emergency Core Cooling System (ECCS). In addition, the Note for Surveillance Requirement 3.3.6.1.7, which reads: ''Radiation detectors may be excluded,'' is being removed since RTT is not required for any radiation detector that provides a primary containment isolation signal as indicated in Table 3.3.6.1-1 of the TS.

Date of issuance: August 23, 1995

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance

Amendment No.: 137

Facility Operating License No. NPF-5: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 5, 1995 (60 FR 35076) The June 22 and July 18, 1995, letters provided clarifying information that did not change the scope of the April 14, 1995, application and initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, GA 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: January 3, 1995, as supplemented by letters dated June 14 and July 6, 1995.

Brief description of amendments: The amendments revise the Technical Specifications (TS) with editorial changes to the Action Statements of TS 3.8.1.1 and 3.8.1.2 in order to reflect the availability of a third offsite ac electrical source. Technical Specification 4.8.1.1.1 is clarified to specify that the offsite ac circuits connected to the onsite Class 1E distribution system are required to be verified OPERABLE. A footnote is added to TS 3.8.3.1 to allow the connection of the third offsite ac source to the onsite busses.

Date of issuance: August 29, 1995

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance

Amendment Nos.: 90 and 68

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6301) The June 14 and July 6, 1995, letters provided clarifying information that did not change the scope of the January 3, 1995, application and initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 29, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, GA 30830

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: May 23, 1995

Brief description of amendments: The amendments revise the column format for the Reactor Protection System and Engineered Safety Feature Actuation System Setpoints

Date of issuance: August 24, 1995

Effective date: August 24, 1995

Amendment Nos.: 176 and 170Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32364) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, FL 33199

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: December 20, 1993, as supplemented July 19, 1994, and February 28, 1995.

Brief description of amendments: The amendments revise the surveillance requirements and load profiles for A, B, and N Train batteries.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment Nos.: 198 and 183

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4939) and June 6, 1995 (60 FR 29879) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 25, 1995, and supplemented June 30, 1995

Brief description of amendments: The amendments allow fuel reconstitution when analyzed in accordance with NRC-approved methodologies. The amendments are line item improvements based on NRC Generic Letter 90-02, ''Alternative Requirements for Fuel Assemblies in Design Features Section of Technical Specifications,'' supplement 1.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment Nos.: 199 and 184

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 5, 1995 (60 FR 35081) The June 30, 1995, supplement provided a minor revision to the proposed Technical Specification pages which was within the scope of the original application and did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: February 14, 1995

Brief description of amendment: This amendment makes the following administrative changes to the Maine Yankee (MY) Technical Specifications (TS):

a. Removes responsibility for audits of the emergency and security plans--including their implementing procedures--from the TS and assigns that responsibility to the emergency and security plans,

b. Assigns review responsibility for significant, accidental, unplanned, or uncontrolled radioactive releases to the Nuclear Safety Audit and Review (NSAR) Committee,

c. Assigns additional reporting requirements to the NSAR Committee, and

d. Provides the President of MY with the authority to initiate an audit of any area of facility operation.

Date of issuance: August 22, 1995

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 152

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16191) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: May 18, 1995

Brief description of amendment: The amendment revises the minimum temperature at which the reactor vessel head bolting studs are allowed to be

placed under tension. In addition, the amendment revises the minimum reactor vessel metal temperature during core critical operation, revises the minimum reactor vessel metal temperature for pressure tests, makes editorial changes, and revises the Bases for the applicable section.

Date of issuance: August 23, 1995

Effective date: As of the date of issuance to be implemented immediately.

Amendment No.: 85

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32369) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: June 15, 1995

Brief description of amendment: The amendment changes the definition for an alteration of the reactor core to one that is consistent with the intent of the improved standard technical specifications. The amendment also makes administrative changes to several technical specification pages.

Date of issuance: August 28, 1995

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 86

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37097) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 28, 1995, as supplemented August 2, 1995.

Brief description of amendment: The amendment changes Technical Specification (TS) Sections 3.7.5, 4.7.5, and 3/4.7.5, to permit Millstone Unit 3 to remain in operation with the average ultimate heat sink water temperature greater than 75* F (but less than or equal to 77* F) for a period of 12 hours.

Date of issuance: August 28, 1995

Effective date: As of the date of issuance.

Amendment No.: 119

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 6, 1995 (60 FR 29881). The information in the licensee's submittal of August 2, 1995, did not require a change to the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 28, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: June 29, 1995

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 (DCPP) to add Mode 1 applicability to TS 3/4.4.2.2, ''Safety Valves - Operating,'' and changes the low-temperature overpressure protection (LTOP) system enable temperature for Mode 4 applicability from 323 degrees F to 270 degrees F in TS 3/4.3.2.1, ''Safety Valves - Shutdown.''

Date of issuance: August 23, 1995

Effective date: August 23, 1995

Amendment Nos.: Unit 1 - Amendment No. 107; Unit 2 - Amendment No. 106

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37098) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, CA 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 1, 1995, as supplemented by letter dated June 20, 1995

Brief description of amendments: The requested changes would modify the applicable operational conditions for the secondary containment isolation radiation monitors located on the refueling floor and for the monitor located in the railroad access shaft.

Date of issuance: August 24, 1995

Effective date: Both units, as of the date of issuance and is to be implemented within 30 days

Amendment Nos.: 152 and 122

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 29, 1995 (60 FR 16192). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 31, 1994, as supplemented by letters dated May 11, and July 3, 1995

Brief description of amendments: This amendment revises the Technical Specifications to permit the relocation of the Turbine Overspeed Protection System to the Updated Final Safety Analysis Report and Controlled Plant Procedures.

Date of issuance: August 24, 1995

Effective date: August 24, 1995

Amendment Nos.: 100 and 64

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55884) The supplemental letters do not

change the initial no significant hazards consideration determination nor the initial Federal Register notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: February 22, 1995

Brief description of amendments: The amendments revise the Technical Specifications Surveillance Requirements to clarify the Emergency Diesel Generator acceptable steady state voltage range.

Date of issuance: August 24, 1995

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 101 and 65

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20525) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: January 13, 1995

Brief description of amendment: The amendment revised the Administrative Controls Section (6.0) of the Technical Specifications for Hope Creek Generating Station to reflect organizational changes and resultant management title changes.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment No.: 77

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 21, 1995 (60 FR 32371) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 23, 1994

Brief description of amendments: The amendments to the Technical Specifications revise the surveillance requirement to perform a visual inspection of containment areas affected by containment entry when containment integrity is established. They are consistent with Item 7.5 of Generic Letter 93-05, ''Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation.''

Date of issuance: August 24, 1995

Effective date: As of the date of issuance, to be implementd within 60 days.

Amendment Nos.: 174 and 155

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1995 (60 FR 6308) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 24, 1995.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: September 16, 1994

Brief description of amendments: These amendments revise Technical Specification (TS) 3/4.2.1, ''Linear Heat Rate.'' The linear heat rate (LHR) limit for steady state operation is revised from 13.9 kw/ft to 13.0 kw/ft. The Bases for TS 3/4.2.1, ''Linear Heat Rate,'' is also being revised to reflect the new value.

Date of issuance: August 23, 1995

Effective date: August 23, 1995, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2 - Amendment No. 124; Unit 3 - Amendment No. 113

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1994 (59 FR 55892) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, CA 92713

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 3, 1995

Brief description of amendments: The amendments delay implementation of Amendment Nos. 182 and 174 until implementation problems are addressed. These changes revise the setpoints and time delays for the auxiliary feedwater loss of power and the 6.9 kv shutdown board loss of voltage and degraded voltage instrumentation.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment Nos.: 207 and 197

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** May 23, 1995 (60 FR 27343) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, TN 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 6, 1995 (TS 94-18)

Brief description of amendments: The amendments revise Surveillance Requirement 4.0.5 by replacing the current Inservice Inspection program and the Inservice Testing program requirements with the requirements stated in the Standard Technical Specifications (NUREG-1431). The amendments also delete Technical Specification 3/4.4.10, ''Structural Integrity ASME Code Class 1, 2 and 3 Components,'' and its related Bases information.

Date of issuance: August 22, 1995

Effective date: August 22, 1995

Amendment Nos.: 208 and 198

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** April 26, 1995 (60 FR 20528)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 22, 1995.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, TN 37402

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: April 17, 1995, as supplemented on June 30, 1995

Brief description of amendment: The amendment revises Technical Specifications Technical Specification 2.2.1, Table 2.2-1. The changes address reducing repeated alarms and partial reactor trips by revising the Overpower Delta-T setpoint function.

Date of issuance: August 21, 1995

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 102

Facility Operating License No. NPF-30. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 10, 1995 (60 FR 24922). The June 30, 1995, letter provided supplemental information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1995. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, MO 65251

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: September 2, 1992

Brief description of amendment: The amendment revises the required signal-to-noise ratio for the source range monitors, as recommended by General Electric.

Date of issuance: August 23, 1995

Effective date: August 23, 1995

Amendment No.: 140

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 19, 1995 (60 FR 37101) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1995.No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, WA 99352

Dated at Rockville, Maryland, this 6th day of September 1995.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects - III/ IV Office of Nuclear Reactor Regulation.

[Doc. 95-22616 Filed 9-12-95; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF MANAGEMENT AND BUDGET

Managerial Cost Accounting Concepts and Standards

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of the fourth Statement of Federal Financial Accounting Standards, ''Managerial Cost Accounting Concepts and Standards for the Federal Government,'' adopted by the Office of Management and Budget (OMB). The statement was recommended by the Federal Accounting Standards Advisory Board and adopted in its entirety by OMB.

ADDRESSES: Copies of the Statement of Federal Financial Accounting Standards No. 4, ''Managerial Cost Accounting Concepts and Standards for the Federal Government,'' may be obtained for $7.50 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238), Stock No. 041–001–00457–2.

FOR FURTHER INFORMATION CONTACT: Ronald Longo (telephone: 202–395–3993), Office of Federal Financial Management, Office of Management and Budget, 725–17th Street, N.W.—Room 6025, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of the fourth Statement of Federal Financial Accounting Standards, ''Managerial Cost Accounting Concepts and Standards for the Federal Government.'' The standard was recommended by the Federal Accounting Standards Advisory Board (FASAB) in June 1995, and adopted in its entirety by the Office of Management and Budget (OMB).

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards, they are to be published in the **Federal Register** and distributed throughout the Federal Government.

G. Edward DeSeve,

Controller.

[FR Doc. 95–22766 Filed 9–12–95; 8:45 am]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2646, Reduction or Waiver of Partial Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget extend approval, under the Paperwork Reduction Act, of the collection of information requirements (1212–0039) contained in its regulation on Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 2646). The effect of this notice is to advise the public of the PBGC's request.

DATES: The PBGC is requesting that OMB complete action on the PBGC's request by September 29, 1995. Comments must be received by September 25, 1995.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9:00 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's regulation on Reduction or Waiver of Partial Withdrawal

Liability (29 CFR Part 2646), which is promulgated pursuant to section 4208 of the Employee Retirement Income Security Act of 1974. Section 4208 contains rules for the reduction or elimination of an employer's partial withdrawal liability under certain circumstances and authorizes the Pension Benefit Guaranty Corporation to promulgate additional partial withdrawal abatement rules.

Under the regulation, a contributing employer can apply to a multiemployer plan for a determination that it has met the requirements for abatement of partial withdrawal liability, and a multiemployer plan sponsor can apply to the PBGC for approval of individually-tailored plan rules for abatement of partial withdrawal liability. The PBGC uses information submitted to it to determine whether plan rules satisfy statutory standards.

The PBGC estimates that the total annual burden of the regulation is 1,250½ hours. Of this total, 1,250 hours represents 1,000 employer abatement applications and plan responses and one-half hour represents a submission to the PBGC by one plan sponsor.

Issued at Washington, DC., this 8th day of September, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–22767 Filed 9–12–95; 8:45 am]

BILLING CODE 7708–01–M

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2675, Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget extend approval, under the Paperwork Reduction Act, of the collection of information requirements (1212–0032) in its regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal (29 CFR Part 2675). The effect of this notice is to advise the public of the PBGC's request.

DATES: The PBGC is requesting that OMB complete action on the PBGC's request by September 29, 1995. Comments must be received by September 25, 1995.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9:00 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

Deborah C. Murphy, Attorney, Office of General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation administers the pension plan termination insurance programs under Title IV of the Employee Retirement Income Security Act of 1974. This collection of information (1212–0032) is contained in the PBGC's regulation on Powers and Duties of Plan Sponsor of Plan Terminated by Mass Withdrawal (29 CFR Part 2675), which implements requirements of ERISA sections 4041A and 4281 for the administration of multiemployer plans that have terminated by mass withdrawal. The PBGC is requesting that the Office of Management and Budget extend approval of the collection of information.

The regulation prescribes rules for notices given and applications made by plan sponsors of mass-withdrawal-terminated plans to assure the consistency and adequacy of the notices and applications. The PBGC uses the information submitted to it in making statutory determinations and identifying and estimating cash needs for financial assistance to the plans.

The PBGC estimates that a total of 25 plans are required to distribute or submit a total of 60 notices or applications under the regulation annually and that the total annual burden of the collection of information is 835 hours, an average of about 14 hours per response.

Issued at Washington, D.C., this 8th day of September, 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95–22768 Filed 9–12–95; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21336; 811–2496]

Lindner Dividend Fund, Inc.; Notice of Application for Deregistration

September 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Lindner Dividend Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 3, 1995, and amended on August 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 2, 1995, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, D.C. 20549. Applicant, 7711 Carondelet, St. Louis, Missouri 63105.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Missouri corporation. On July 3, 1974, applicant filed a notice of registration pursuant to section 8(a) of the Act on Form N–8A. On July 31, 1974 applicant filed a registration statement

to register its shares. The registration statement became effective on June 22, 1976, and the initial public offering commenced on or about July 31, 1974.

2. On April 6, 1995, applicant's board of directors adopted an Agreement and Plan of Reorganization (the ''Plan''). The Plan provided that applicant would transfer its assets to a separate series of Lindner Investments, Inc. (the ''Successor Fund''), in exchange for the assumption by the Successor Fund of applicant's liabilities and the issuance of shares of the Successor Fund.

3. Applicant and the Successor Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. In order to comply with rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's directors determined that the reorganization was in the best interests of applicant and applicant's shareholders.[1] This determination was based, among other things, on: (a) The expense savings which result from the elimination of regular annual meetings; (b) the economies of scale realized in a fund family; and (c) the ability to provide investors an opportunity to switch between funds within a fund group. Applicants also determined, in compliance with rule 17a–8, that the interests of existing shareholders would not be diluted as a result of the reorganization.

4. The proxy statement was filed with the SEC and distributed to applicant's shareholders on or about May 2, 1995. Applicant's shareholders approved the Plan on June 29, 1995.

5. On June 30, 1995, the reorganization was consummated. Applicant transferred its assets to Successor Fund in exchange for the assumption by Successor Fund of applicant's liabilities and the issuance of a number of shares of Successor Fund equal to the number of outstanding shares of applicant on that date. Following the exchange, applicant liquidated and distributed the Successor Fund shares to each of its shareholders on the basis of one Successor Fund share for one outstanding share of applicant. Upon completion of the reorganization, each shareholder of applicant became an owner of Successor Fund shares equal in number and aggregate net asset value to his or her shares of applicant held immediately prior to the reorganization.

6. The expenses applicable to the reorganization are estimated to be approximately $66,444. Applicant and Successor Fund each paid its own expenses related to the reorganization. Applicant's share of the expenses was approximately $35,000.

7. At the time of filing the application, applicant had no assets, and no outstanding debts or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22653 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

[1] Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 21335; 811–2203]

Lindner Fund, Inc.

September 6, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Lindner Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 3, 1995, and amended on August 24, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 2, 1995 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 7711 Carondelet, St. Louis, Missouri 63105.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Missouri corporation. On June 28, 1971, applicant filed a notice of registration pursuant to section 8(a) of the Act on Form N–8A. On September 27, 1971 applicant filed a registration statement to register its shares. The registration statement became effective on May 24, 1973, and the initial public offering commenced on or about September 27, 1971.

2. On April 6, 1995, applicant's board of directors adopted an Agreement and Plan of Reorganization (the ''Plan''). The Plan provided that applicant would transfer its assets to a separate series of Lindner Investments, Inc. (the ''Successor Fund''), in exchange for the assumption by the Successor Fund of applicant's liabilities and the issuance of shares of the Successor Fund.

3. Applicant and the Successor Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser, common directors, and common officers. In order to comply with rule 17a–8, which governs mergers of certain affiliated investment companies, applicant's directors determined that the reorganization was in the best interests of applicant and applicant's shareholders.[1] This determination was based, among other things, on: (a) The expense savings which result from the elimination of regular annual meetings; (b) the economies of scale realized in a fund family; and (c) the ability to provide investors an opportunity to switch between funds within a fund group. Applicants also determined, in compliance with rule 17a–8, that the

[1] Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

interests of existing shareholders would not be diluted as a result of the reorganization.

4. A proxy statement was filed with the SEC and distributed to applicant's shareholders on or about May 2, 1995. Applicant's shareholders approved the Plan on June 29, 1995.

5. On June 30, 1995, the reorganization was consummated. Applicant transferred its assets to Successor Fund in exchange for the assumption by Successor Fund of applicant's liabilities and the issuance of a number of shares of Successor Fund equal to the number of outstanding shares of applicant on that date. Following the exchange, applicant liquidated and distributed the Successor Fund shares to each of its shareholders on the basis of one Successor Fund share for one outstanding share of applicant. Upon completion of the reorganization, each shareholder of applicant became an owner of Successor Fund shares equal in number and aggregate net asset value to his or her shares of applicant held immediately prior to the reorganization.

6. The expenses applicable to the reorganization are estimated to be approximately $66,546. Applicant and Successor Fund each paid its own expenses related to the reorganization. Applicant's share of the expenses was approximately $35,000.

7. At the time of filing the application, applicant had no assets, and no outstanding debts or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it proposed to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22656 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release Nos. 33–7209; 34–36189; File No. 265–20]

Advisory Committee on the Capital Formation and Regulatory Processes

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: This is to give notice that the Securities and Exchange Commission Advisory Committee on the Capital Formation and Regulatory Processes will meet on September 29, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10:00 a.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–20. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David A. Sirignano, Committee Staff Director, at 202–942–2870; Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, notice is hereby given that the Committee will meet on September 29, 1995 in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10:00 a.m. The meeting will be open to the public.

The Committee was formed in February 1995, and its responsibilities include advising the Commission regarding the informational needs of investors and the regulatory costs imposed on the U.S. securities markets.

The purpose of this meeting will be to discuss the progress of the Committee's work, to discuss elements for a company registration system, as well as to discuss general organizational matters.

Dated: September 6, 1995.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–22651 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36197; International Series Release No. 850; File No. SR–OCC–95–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Modifying the Capital Computation Formula and Reporting Requirements Applicable to Canadian Clearing Members of the Options Clearing Corporation

September 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 13, 1995, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–95–11) as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify OCC's rules pertaining to the financial requirements of Canadian Clearing Member[2] firms, including the capital computation formula and reporting requirements applicable to those members, to reflect revisions to the capital computation and reporting standards recently adopted by various Canadian regulatory authorities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Set forth in sections (A), (B), and (C) below, are the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change seeks to modify OCC's rules concerning the financial requirements of Canadian Clearing Members, including the capital computation formula and reporting requirements applicable to Canadian Clearing Members, to reflect revisions to the capital computation and reporting standards recently adopted by various Canadian regulatory authorities. OCC's rules allow Canadian Clearing Members to submit required financial reports in accordance with the accounting and reporting standards of their appropriate self-regulatory body.[4] In monitoring Canadian Clearing Member compliance with OCC financial requirements, OCC

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The term Canadian Clearing Member is defined in OCC By-Law Article I, Section I.N. (3).

[3] The Commission has modified parts of these statements.

[4] OCC By-law, Article I.N. (2) employs the term ''appropriate self-regulatory body'' as defined in the Supplementary Instructions re Completion of the Joint Regulatory Financial Questionnaire to refer to the governmental agency or self-regulatory authority primarily responsible for regulating the activities of a Canadian Clearing Member.

converts this financial information into a form consistent with Rule 15c3–1 under the Act.[5]

The capital formula applied under Canadian securities regulations to Canadian securities firms has been revised and incorporated into a new standard report format. The prior capital formula applied a minimum capital requirement, as assessed by a working capital computation (*i.e.,* total capital less non-allowable assets), based upon volume of business determined by a percentage of adjusted liabilities. The new capital formula continues to be based on a working capital computation minus certain charges, including charges that reflect the risk of proprietary securities held in inventory. However, the new capital formula replaces the concept of adjusted liabilities with revised definitions of allowable assets and margin charges that are intended to reflect the credit worthiness of counterparties and the economic substance of transactions. The report format used by Canadian securities firms to report their capital computation also has been revised. OCC proposes to change its financial requirements and reporting rules to conform them to the revised capital formula and reporting format.

Specifically, the current Interpretations and Policies (''Interpretation'') .01 to OCC Rule 301, regarding initial financial requirements, provides that a Canadian Clearing Member that commenced doing business as a broker or dealer within twelve months prior to its admission to Clearing Membership must maintain ''initial net free capital,'' as defined in the Supplementary Instructions re Completion of the Joint Regulatory Financial Questionnaire (''Supplementary Instructions''), of not less than ten percent of such Clearing Member's ''adjusted liabilities,'' as defined in the Supplementary Instructions, until the later of (i) three months after its admission to Clearing Membership or (ii) twelve months after it commenced doing business as a broker or dealer. Currently, Interpretation .01 to OCC Rule 302, regarding minimum net capital requirements, provides that a Canadian Clearing Member shall maintain net free capital, as defined in the Supplementary Instructions, of not less than the amount of net free capital that would be required of such Clearing Member under Section 100.2 of the By-Laws of the Investment Dealers Association of Canada (''IDAC'') if the Clearing Member was a member of the IDAC.

As proposed, Interpretation .01 to Rule 301 will require a Canadian Clearing Member to maintain an initial ''early warning reserve'' as determined in accordance with the Joint Regulatory Financial Questionnaire and Report (''JRFQ&R'') of not less than $1,000,000 (U.S.) for the same period as previously required. The proposed Interpretation .01 to Rule 302 will provide that the minimum net capital requirement of a Canadian Clearing Member be the early warning reserve as determined under the JRFQ&R in an amount not less than the greater of $750,000 U.S.) or 2% of such Canadian Clearing Member's total margin requirement as determined in accordance with the JRFQ&R. Application of the early warning reserve as determined under the JRFQ&R also will replace the use of the net free capital formula as determined under the Supplementary Instructions in OCC Rules 303 and 304, respectively, regarding early warning notice and restrictions on distributions.

Finally, in connection with OCC's financial reporting requirements, each Canadian Clearing Member will be required to file its JRFQ&R with OCC on a monthly basis except as provided in the Interpretations to Rule 306. The JRFQ&R replaces the Joint Industry Monthly Financial Report previously required under the Interpretations to OCC's Financial Reporting Rule.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–95–11 and should be submitted by October 4, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22652 Filed 9–12–95; 8:45 am]

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[5] 17 CFR 240.15c3–1.

[6] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36193; File No. SR–PHLX–95–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Options on the PHLX Forest and Paper Products Sector Index

September 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 15, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'') or ''Exchange'') file with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to list for trading cash-settled, European-style [1] options on the PHLX Forest and Paper Products Sector Index (''Index''), a new index developed by the Exchange. The Index is comprised of the stocks of 14 domestic forest and paper product companies which, the PHLX represents, effectively represent the available forest and paper products industry.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] A European-style option can be exercised only during a specified period immediately prior to the expiration of the option.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to list for trading cash-settled, European-style options on the Index. The Index is comprised of the stocks of 14 domestic forest and paper product companies which, the PHLX represents, effectively represent the available forest and paper products industry.[2] The Exchange also represents that the Index meets the generic criteria for listing options on narrow-based indexes as set forth in PHLX Rule 1009A, ''Designation of the Index,'' as approved by the Commission.[3] Accordingly, the PHLX is submitting this proposed rule change pursuant to and in accordance with the procedures set forth in the Commission's Generic Index Approval Order.[4] The PHLX proposes to list and trade options on the Index no sooner than 30 days after August 15, 1995, the filing date of this proposed rule change. The contract specifications for the options on the proposed Index are as follows:

Underlying Index: The Index is an equal-dollar weighted index comprised of stocks from 14 domestic forest and paper products companies. All 14 stocks in the Index are traded on the New York Stock Exchange (''NYSE'') and are therefore ''reported securities'' as defined in Rule 11Aa3–1 under the Act. The PHLX represents that all of the Index's component stocks presently meet the listing criteria for equity options contained in PHLX Rule 1009, ''Criteria for Underlying Stocks,'' and are currently the subject of standardized options trading in the U.S.

According to the PHLX, as of August 4, 1995, the market capitalization of all of the stocks in the Index exceeded $60 billion and the individual capitalizations of the Index's component stocks ranged from $1.6 billion to $10.8 billion. The PHLX states that all 14 of the Index's component stocks had monthly trading volumes in excess of one million shares over each of the past six months from February through July 1995. Accordingly, the Exchange represents that, with respect to the criteria for market capitalization and trading volume, the Index satisfies the generic listing standards as stated in PHLX Rule 1009A.

Index Calculation: The methodology used to calculate the Index is an equal dollar-weighting method, meaning that each of the Index's component stocks is represented in approximately equal dollar amounts. The Exchange believes that this method of calculation is important because it will provide each component issue with equivalent influence on the movement of the Index value instead of allowing one highly capitalized stock to dominate the movement of the Index. To determine the initial dollar weighting of the stocks, the Exchange calculated the number of shares of each stock that would represent an investment of approximately $10,000 in each of the stocks comprising the Index based on closing prices on August 4, 1995. The value of the Index equals the current market value of the sum of the assigned number of shares of all of the stocks in the Index divided by the current Index divisor. The Index value was set at 250 at the close on January 31, 1995.

Index Maintenance: The Exchange will rebalance the Index quarterly, following the close of trading on the third Friday of each March, June, September, and December by changing the number of shares of each component stock so that each company is again represented in approximately $10,000 ''equal'' dollar amounts. If it becomes necessary, a divisor adjustment will be made when rebalancing occurs to ensure the continuity of the Index's value. The newly adjusted portfolio will then become the basis for the Index's value on the first trading day following the quarterly adjustment.

The number of shares of each component stock in the Index will remain fixed between quarterly reviews, except in the event of certain types of corporate action, such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, rights offering, recapitalization, reorganization or similar event with respect to the component stocks. In the case of a merger or consolidation of the issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted to the nearest whole share to maintain the component's relative weight in the Index prior to the merger. Should a stock replacement occur, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share.

[2] The components of the Index are: Boise Cascade; Bowater Inc.; Champion International Corporation; Federal Paper Board Company; Georgia Pacific Corporation; International Paper Company; James River Corporation; Louisiana Pacific Corporation; Mead Corporation; Stone Container Corporation; Temple Inland, Inc.; Union Camp Corporation; Westvaco Corporation; and Weyerhauser Company.

[3] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (''Generic Index Approval Order'').

[4] *See* note 3, *supra.*

In selecting replacement components for the Index, the PHLX will take into account the capitalization, liquidity, volatility and name recognition of any proposed replacement stock and assure that the Index continues to meet the maintenance criteria in PHLX Rule 1009A(c). In each of the above cases, the divisor will be adjusted, if necessary, to ensure the continuity of the Index. If the Index fails at any time to satisfy the maintenance criteria set forth in the Generic Index Approval Order,[5] the Exchange will notify the Commission immediately and will not open for trading any additional series of options on the Index unless the Exchange determines such failure is not significant and the Commission concurs in that determination or unless the continued listing of options of the Index has been approved by the Commission under Section 19(b)(2) of the Act.

Pursuant to the Generic Index Approval Order, [6] the PHLX will not increase to more than 19, or decrease to fewer than 9, the number of stocks in the Index, nor will the PHLX make any change in the composition of the Index that would cause fewer than 90% of the stocks, by weight, or fewer than 80% of the total number of stocks in the Index to qualify as stocks eligible for equity options trading under PHLX Rule 1009, ''Criteria for Underlying Stocks.'' [7]

The Index will be updated dynamically and disseminated every 15 seconds during the trade day. The PHLX has retained Bridge Data, Inc. to compute and perform all necessary maintenance of the Index. Pursuant to PHLX Rule 1100A, ''Dissemination of Information,'' updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority (''OPRA'').[8] The Index value also will be available on broker/dealer interrogation devices to subscribers of the option information.

Unit of Trading; Each options contract will represent $100, the Index multiplier, times the Index value. For example, an Index value of 200 will result in an option contract value of $20,000 ($100×200).

Exercise Price: The exercise price will be set at 5 point intervals in terms of the current value of the Index. The PHLX will list additional exercise prices in accordance with PHLX Rule 1101A(a), ''Terms of Option Contracts.''

Aggregate Exercise Price: The aggregate exercise price is found by multiplying the Index multiplier ($100) by the exercise price.

Settlement Price Determination: The Index option settlement value will be determined by using the opening prices of the component stocks on the third Friday of each month.

Settlement Value: Based upon the operating prices of the component stocks on the last day prior to expiration.

Last Trading Day: The Thursday prior to the third Friday of the month for options which expire on the Saturday following the third Friday of that month.

Trading Hours: 9:30 a.m. to 4:10 p.m. EST.

Position and Exercise Limits: The Index is an industry index and the PHLX will apply position and exercise limits pursuant to PHLX Rules 1001A(b)(i), ''Position Limits,'' and 1002A, ''Exercise Limits,'' respectively.

Expiration Cycles: Three months from the March, June, September, December cycle plus at least two additional near-term months. The PHLX also will trade long-term Index options having up to 36 months to expiration pursuant to PHLX Rule 1101A(b)(iii).

Issuer and Guarantor: The Options Clearing Corporation (''OCC'').

Premium Quotations: Premiums will be expressed in terms of dollars and fractions of dollars pursuant to PHLX Rule 1033A, ''Meaning of Premium Bids and Offers.'' For example, a bid or offer of 1½ will represent a premium per options contract of $150 (1½ x 100). The minimum change in a premium under $3 will be 1/16 and 1/8 for a quote of $3 or greater.

The Index options will be traded pursuant to current PHLX rules governing the trading of index options.[9] In addition, the Exchange represents that surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in Index options. These procedures include having complete access to trading activity in the underlying securities, which are all traded on the NYSE. In addition, the Intermarket Surveillance Group Agreement (''ISG Agreement''), dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of Index options.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement and Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change complies with the standards set forth in the Generic Index Approval Order,[10] it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. Pursuant to the Generic Index Approval Order, the Exchange may not list Index options for trading prior to 30 days after August 15, 1995, the date the proposed rule change was filed with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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[5] *See* note 3, *supra.*

[6] *See* note 3, *supra.*

[7] In addition, the Generic Index Approval order requires that at all time, at least 90% of the stock in the Index, by weight, and 80% of the total number of stocks comprising the Index, individually, must satisfy the Exchange's rules governing the listing and maintenance of listing of options thereon. *See* Generic Index Approval Order, *supra* note 3.

[8] The PHLX represents that the PHLX and OPRA have the necessary systems capacity to support the new series of options that will result from the introduction of options and long-term options on the Index. *See* Letter from Joseph Corrigan, Executive Director, OPRA, to Murray Ross, Secretary, PHLX, dated August 17, 1995; and Letter from William H. Morgan, Vice President, Trading Systems, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Commission, dated August 22, 1995.

[9] *See* PHLX Rules 1001A through 1102A, ''Limitation of Exchange Liability,'' and 1000, ''Applicability, Definitions, and References,'' through 1072, ''Reporting Requirements Applicable to Short Sales in NASD/NM Securities.''

[10] *See* note 3, *supra.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 4, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22654 Filed 9–12–95; 8:45 am]

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[Release No. 34–36194; File No. SR–PHLX–95–16]

Self-Regulatory Organization; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Narrow-Based Index Options

September 6, 1995.

I. Introduction

On March 6, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PHLX Rule 1001A, ''Position Limits,'' to increase the position and exercise limits[3] for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts to 6,000, 9,000, or 12,000 contracts.

Notice of the proposed rule change appeared in the **Federal Register** on May 16, 1995.[4] No comments were received on the proposal.

II. Background and Description

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of option contracts that a member or customer can hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. At the same time, the Commission has recognized that option position and exercise limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[5]

In 1983, the PHLX set position and exercise limits for narrow-based index options at 4,000 contracts.[6] In 1993, the Commission approved a PHLX proposal to amend PHLX Rule 1001A to increase the position limits for narrow-based index options to the current levels of 5,500, 7,500, or 10,500 contracts.[7] The PHLX proposes to amend Exchange Rule 1001A(b)(1) to increase the position and exercise limits for industry index options from 5,500, 7,500, or 10,500 contracts to 6,000, 9,000 or 12,000 contracts.[8]

The Exchange believes that its proposal is consistent with the Act for several reasons. First, the Exchange notes that the current industry index option position limits have been in place since 1993 and that there have been no further increases in position limits for narrow-based index options since that time, despite substantial changes in the marketplace. Most notable among these changes, according to the PHLX, is an appreciable growth in index options trading. The PHLX states that this marked increase in index options volume has significantly increased liquidity in PHLX-traded index options.[9]

Second, the Exchange believes that the proposed increases are reasonable and consistent with the gradual, evolutionary approach adopted previously by the Commission and the options exchanges when increasing position and exercise limits.[10] Accordingly, the PHLX proposes a 9% increase in the lowest tier (from 5,000 to 6,000 contracts); a 20% increase for options currently at the 7,500 contract limit (increased to 9,000 contracts); and a 15% increase in the highest tier, currently at 10,500 contracts (increased to 12,000 contracts).

Third, the Exchange believes that the proposed increases are needed by traders and investors. According to the PHLX, Exchange members and customers have asked the Exchange to propose an increase in position limits, primarily because interested trading

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[11] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days. PHLX Rule 1002A, ''Exercise Limits,'' states that for the purposes of determining compliance with PHLX Rule 1002, ''Exercise Limits,'' exercise limits for index option contracts shall be equivalent to the position limits described in PHLX Rule 1001A.

[4] *See* Securities Exchange Act Release No. 35694 (May 9, 1995), 60 FR 26067.

[5] *See, e.g.*, Securities Exchange Act Release No. 33285 (December 3, 1993), 58 FR 65201 (December 13, 1993) (order approving File No. SR–Amex–93–27) (increasing position and exercise limits for equity options and narrow-based index options).

[6] *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (order approving File No. SR–PHLX–83–17).

[7] *See* Securities Exchange Act Release No. 33288 (December 3, 1993), 58 FR 65221 (December 13, 1993) (order approving File No. SR–PHLX–93–07) (''1993 Approval Order''). Specifically, PHLX Rule 1001A(b)(1) currently provides the following position limits for industry index options: (i) 5,500 contracts for an index where a single component stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits; (ii) 7,500 contracts for an index where a single component stock accounted, on average, for 20% or more of the index value or any five component stocks together accounted, on average, for more than 50% of the index value but no single component stock accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits; or (iii) 10,500 contracts where the conditions requiring a limit of 5,500 contracts or 7,500 contracts have not occurred.

[8] The PHLX currently trades options on the following narrow-based indexes: (1) the Gold/Silver Index (''XAU'') 5,500 contracts; (2) the Utility Index (''UTY'') (10,500 contracts); (3) the PHLX/KBW Bank Index (''KBX'') (10,500 contracts); (4) the Phone Index (''PNX'') (5,500 contracts); (5) the Semiconductor Index (''SOX'') (7,500 contracts); and (6) the Airline Sector Index (''PLN'') (10,500 contracts).

[9] The PHLX states that index options volume increased 450% (from 354,614 contracts to 1,957,171 contracts in 1994 as compared to 1993.

[10] According to the PHLX, the most recent position limit changes in 1993 represented changes of 38% (from 4,000 to 5,500 contracts); 25% (from 6,000 to 7,500 contracts); and 31% (from 8,000 to 10,500 contracts).

participants have not been able to meet their investment needs at current position limit levels. Specifically, the PHLX notes that certain institutional traders handling industry funds deal in securities valued many times higher than the maximum permissible position under PHLX rules. Based on such member and customer requests, the Exchange believes that the current position limit levels discourage market participation by large investors and the institutions that compete to facilitate the trading interests of large investors. Accordingly, the PHLX proposes to raise position and exercise limits for narrow-based index options to accommodate the liquidity and hedging needs of large investors and the facilitators of those investors.

Fourth, the Exchange believes that the proposal should increase the depth and liquidity of the markets for index options. The PHLX also believes that higher position limits would further accommodate the hedging needs of Exchange market makers and specialists, who are also restricted by current levels.

The PHLX notes that it continues to monitor the markets for evidence of manipulation or disruption caused by investors with positions at or near current position or exercise limits and that the new limits will not diminish the surveillance function in this regard. Additionally, the PHLX states that its surveillance procedures have become increasingly sophisticated and automated.

For these reasons, the Exchange believes that the proposal to increase narrow-based index option position limits is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. The Exchange believes that the proposal should remove impediments to and perfect the mechanism of a free and open market by providing market opportunity to investors constricted by current position limit levels. The PHLX also believes that by stimulating market participation and thereby increasing option market depth and liquidity, the proposed rule change should promote just and equitable principles of trade.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[11] Specifically, the Commission finds that the proposed position and exercise limits for narrow-based index options should accommodate the needs of investors and market participants and should increase the potential depth and liquidity of the options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or the underlying securities.

As noted above, the Commission believes that although the position and exercise limits for options must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market. In this regard, the PHLX has stated that the current position limits discourage market participation by certain large investors and the institutions that compete to facilitate their trading. In addition, the PHLX notes that index option trading volume has increased significantly since 1993, when the current industry index option position limits were established. In light of the increased volume of narrow-based index option trading and the needs of investors and market makers, the Commission believes that the PHLX's proposal is a reasonable effort to accommodate the needs of market participants.

In addition, the Commission notes that the proposal, while increasing the positions limits for narrow-based index options, continues to reflect the unique characteristics of each index option and to maintain the structure of the current three-tiered system. Specifically, the lowest proposed limit, 6,000 contracts, will apply to narrow-based index options in which a single underlying stock accounts for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option positions limits. A position limit of 9,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 12,000-contract limit will apply only if the Exchange determines that the conditions requiring either the 6,000-contract limit or the 9,000-contract limit have not occurred. Accordingly, the proposal allows the Exchange to avoid placing unnecessary restraints on those narrow-based index options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, may be the greatest.

The Commission believes that the proposed increases for the three tiers of 9%, 20%, and 15%, for lowest to highest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. In this regard, the absence of discernible manipulative problems under the current three-tiered position and exercise limit system for narrow-based index options leads the Commission to conclude that the modest increases proposed by the Exchange are warranted. The Commission recognizes that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns. However, based upon the absence of discernible manipulation or disruption problems under current limits, the Commission believes that the proposed limits can be safely considered. Accordingly, the Commission believes that the liberalization of existing position and exercise limits for narrow-based index options is now appropriate.[12]

The Commission notes that the Exchange has had considerable experience monitoring the current three-tiered framework in narrow-based stock index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the proposed increase in position and exercise limits for narrow-based index

[11] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[12] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

options will not cause significant problems.

Finally, the PHLX has indicated that its surveillance procedures have become increasingly sophisticated and automated. The Commission believes that the Exchange's surveillance programs are adequate to detect and deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants.[13]

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal to increase the position and exercise limits for narrow-based index options to 6,000, 9,000, or 12,000 contracts, depending on the percentage stock concentrations within the index, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PHLX–95–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22655 Filed 9–12–95; 8:45 am]

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[Release No. 34–36198; File No. SR–Phlx–95–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Amendment of the Exchange's Schedule of Fees and Charges

September 7, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 23, 1995 the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits a proposed rule change to amend the Phlx's Schedule of Fees and Charges respecting charges for nonexchange sponsored securities execution equipment operated by Phlx members and member organizations on the Phlx equity options trading floor. The proposed amendment would modify the existing $250.00 monthly fee assessed upon each stock execution machine on the Phlx equity options floor. A new securities execution equipment registration fee of $300.00 per terminal would be imposed for the period September 1, 1995 through December 31, 1996, on each member operating equipment that has execution capability and/or order routing access to the common message switch of the primary registered national securities exchanges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Since 1990, the Exchange has imposed a monthly proprietary stock execution machine charge of $250.00.[2] Effective at the opening of business, Friday, September 1, 1995, the Exchange will impose a $300.00 securities execution equipment registration fee for the period September 1, 1995 through December 31, 1996, on nonexchange sponsored terminals or computers configured for execution and/or routing capabilities to the common message switch of the primary registered national securities exchanges maintained on or accessible to the Phlx equity options trading floor. This registration fee will be assessed to each Phlx member or member organization maintaining and operating such nonexchange sponsored securities execution equipment on the Phlx options trading floors. The Phlx will continue to retain the monthly $250.00 fee charged to members and member organizations maintaining and operating such equipment on the Phlx equity trading floor.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of Section 6(b)(4)[4] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.

The Phlx Finance Committee and the Phlx Floor Procedure Committee provided specific recommendations to the Phlx's Board of Governors.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (e) of Rule 19b–4 thereunder.[6]

At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

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[13] The Commission emphasizes that the PHLX must closely monitor compliance with position and exercise limits and to impose appropriate sanctions for failures to comply with the Exchange's position and exercise limit rules.

[14] 15 U.S.C. § 78f(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 28212 (July 17, 1990), 55 FR 30065 (implementing a monthly charge on proprietary stock execution machines); Securities Exchange Act Release No. 33954 (April 21, 1994), 59 FR 22191 (allowing members to earn a monthly credit of 50% of the fees charged for stock execution machines).

[3] 15 U.S.C. 78f(B).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4.

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Philadelphia Stock Exchange. All submissions should refer to File No. SR–Phlx–95–64 and should be submitted by October 13, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–22709 Filed 9–12–95; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2253]

Advisory Panel to the United States Section of the North Pacific Anadromous Fish Commission; Notice of Partially Closed Meeting

The Advisory panel to the United States Section of the North Pacific Anadromous Fish Commission will meet on September 28, 1995, at the Radisson Hotel, SeaTac Airport, 17001 Pacific Highway South, Seattle, Washington. This session will involve discussion of the Third Annual Meeting of the North Pacific Anadromous Fish Commission, to be held November 6–10, 1995, in Seattle, Washington. The discussion will begin at 7:00 p.m. and is open to the public.

The Advisory Panel will also meet at 8:00 p.m. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the Third Annual Meeting of the North Pacific Anadromous Fish Commission. The members of the Advisory Panel will examine various options for the U.S. position at the Third Annual Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close the 8:00 p.m. session pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., and 5 U.S.C. 552b(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. William E. Dilday, Senior Pacific Affairs Officer, Office of Marine Conservation (OES/OMC), Room 7820, U.S. Department of State, Washington, D.C. 20520–7818. Mr. Dilday can be reached by telephone on (202) 647–3940 or by FAX (202) 736–7350.

Dated: August 29, 1995.

Ambassador David A. Colson,

Deputy Assistant Secretary for Oceans.

[FR Doc. 95–22662 Filed 9–12–95; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Free Flight Implementation Task Force

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appensix 2), notice is hereby given for Free Flight Implementation Task Force meeting to be held September 20 and 21, 1995. The meeting will be held at the MITRE Reston facility, 11493 Sunset Hills Road, Reston, Virginia.

The meeting on Wednesday, September 20, will begin at 9:30 in Room S1102 with a Plenary session, where the Task Force Chairman and Working Group Co-Chairs will review Task Force objectives and status.

The agenda for the remainder of September 20 and all of September 21 will be separate and concurrent Working Group deliberations.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Exceptional circumstances, such as the need to complete the final report for this task in a relatively short time and the difficulty in locating adequate conference space, exist in this instance to permit public notice of this meeting in less than 15 days.

Issued in Washington, D.C., on September 7, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–22738 Filed 9–12–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held September 29, 1995, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of August 21 Meeting; (3) Consider and Approve: a. Proposed Final Draft, Minimum Operational Performance Standards for Airborne Radio Communications Equipment Operating Within the Radio Frequency Range 117.975–137.000 MHz (RTCA Paper No. 463–95/TMC–187); b. Proposed Final Draft, Minimum Operational Performance Standards for Global Navigation Satellite System (GNSS) Airborne Antenna Equipment (RTCA Paper No. 468–95/TMC–191); c. Proposed Final Draft, Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Airborne Equipment (RTCA Paper No. 469–95/TMC–192); (4) Take Action on Open Items from Previous Meeting: a. Report on Integration of RTCA Response to 1994 Symposium Recommendations; b. White Paper on RNP Issues and Recommendations; c. Report from FAA Concerning Cockpit Moving Map Displays; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (Phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

[7] 17 CFR 200.30–3(a)(12).

Issued in Washington, D.C., on September 8, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–22736 Filed 9–12–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc.; Special Committee 183; Standards for Airport Security Access Control Systems

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 183 meetings to be held September 27–28, 1995. The first day Plenary session will begin at 9:30 a.m.; the second day Editorial Working Group session will be from 8:30–11:30 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036. The agenda will include: (1) Administrative Announcements; (2) General Introductions; (3) Review and Approval of Agenda; (4) Review and Approval of Minutes of the Meeting held July 25–26; (5) Review of SC–183 Meeting Schedule October-November 1995; (6) Review of Draft Material; (7) Working Group Issues; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 7, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–22739 Filed 9–12–95; 8:45 am]

BILLING CODE 4810–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on September 27, 1995, at 12:30 p.m.

ADDRESSES: The meeting will be held at the Air Line Pilots' Association, 1625 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Dwonna Johnson, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on September 27, 1995. The agenda for this meeting will include status reports on the All Weather Operations Working Group, the Single Engine Operations Working Group, and the Fatigue Countermeasures and Alertness Management Working Group. Attendance is open to the interested public but may be limited by the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 6, 1995.

Quentin J. Smith,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 95–22742 Filed 9–12–95; 8:45am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In August 1995, there were six applications approved. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Department of Port Control, Cleveland, Ohio.

Application Number: 95–03–C–00–CLE.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $19,475,642.

Estimated Charge Effective Date: November 1, 1995.

Estimated Charge Expiration Date: February 1, 1997.

Class of Air Carriers not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Cleveland Hopkins International Airport (CLE).

Brief Description of Project Approved for Collection at CLE and Use at CLE: Asbestos removal in terminal at CLE.

Brief Description of Project Approved for Collection at CLE: Waste water—glycol collection system construction.

Brief Description of Project Approved for Collection at CLE and Use at Burke Lakefront Airport: Passenger jetways (non-exclusive use), baggage claim/security improvements (non-exclusive use).

Brief Description of Project Partially Approved for Collection at CLE and Use at CLE: Acquisition of Analex Office Building and vacant land in the Aerospace Technology Park.

Determination: This approval is limited to the acquisition of the land and building in accordance with FAA Order 5100.37A, Land Acquisition and Relocation Assistance for Airport Projects. Relocation assistance is not eligible for commercial businesses. Also, the demolition of the building is not approved at this time. The office building was the subject of an airspace evaluation and a determination of no hazard was issued, the building is a compatible land use, and the Department of Port Control, City of Cleveland, has not determined the appropriate National Environmental Protection Act action with respect to demolition of the Analex building. In the interim, the building may be used to generate new airport revenue. If, after the final acquisition, costs are determined and less than the approved amount is required for the acquisition, the Department of Port Control, City of Cleveland, will be required to issue an

amendment to this application to reduce the PFC amount for the project and inform the air carriers.

Brief Description of Project Partially Approved for Collection at CLE: NASA feasibility and pre-engineering study: relocation of engine test facility.

Determination: The estimated task costs requested by the City of Cleveland were reduced based on the FAA's analysis of recent prior similar studies and the FAA's experience in this area.

Decision Date: August 4, 1995.

For Further Information Contact: Dean C. Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: City of Pensacola, Florida.

Application Number: 95–02–U–00–PNS.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,918,000.

Charge Effective Date: February 1, 1993.

Estimated Charge Expiration Date: December 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: The City of Pensacola was previously approved, in a decision dated November 23, 1992, to exclude a class of air carriers from the requirement to collect the PFC. This decision does not affect that ruling.

Brief Description of Projects Approved for Use of PFC Revenue: Provide a vegetation barrier, purchase avigation easements.

Decision Date: August 10, 1995.

For Further Information Contact: Sandra A. Nazar, Orlando Airports District Office, (407) 648–6586.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

Application Number: 95–06–U–00–CHO.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,524,300.

Charge Effective Date: April 1, 1995.

Estimated Charge Expiration Date: April 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: The Charlottesville-Albemarle Airport Authority was previously approved, in a decision dated January 26, 1995, to exclude a class of air carriers from the requirement to collect the PFC. This decision does not affect the ruling.

Brief Description of Projects Approved for Use of PFC Revenue: Acquire snow blower and broom, Snow loader/plow, Runway deicing vehicle, Aircraft rescue and firefighting (ARFF) vehicle.

Brief Description of Project Disapproved for Use of PFC Revenue: Overlay runway 3–21.

Determination: Disapproved for use of PFC revenue. The FAA's determination approving PFC collection for this project, dated January 26, 1995, notes that, at the time that collection authority was requested, the financial plan for this project included proposed Airport Improvement Program (AIP) entitlement and discretionary grants as the major sources of funding. The FAA's January 26 determination also states that the FAA expected that the public agency would finalize its financial plan prior to the submission of a ''use'' application for this project. However, the FAA has determined that, at this time, the financial plan for this project is still tentative and that the public agency has not satisfactorily demonstrated the ability to complete the project without the proposed AIP funds, for which the FAA has not made a commitment to provide. Therefore, the FAA is disapproving this project at this time. The public agency is encouraged to reapply for PFC use authority for this project after it has finalized its financial plan. This decision does not affect the collection authority previously approved for this project.

Decision Date: August 10, 1995.

For Further Information Contact: Robert Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: City of Waco, Texas.

Application Number: 95–01–C–00–ACT.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $615,742.

Estimated Charge Effective Date: November 1, 1995.

Estimated Charge Expiration Date: July 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use of PFC Revenue: Planning studies, Airfield safety improvements, Terminal safety improvements, ARFF vehicle.

Decision Date: August 14, 1995.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida

Application Number: 95–03–C–00–MCO.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $19,138,741.

Estimated Charge Effective Date: September 1, 1995.

Estimated Charge Expiration Date: June 1, 1996.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection Use:

Design for north crossfield taxiway,
Preliminary design for Airside 2 and related improvements,
Construction of taxiways R–60, F–15, and ARFF taxiway access,
West ramp rehabilitation design,
Matching funds for master plan,
Replacement for pumper engine no. 84,
Replacement for airfield sweeper no. 70353,
Twenty-four inch sanitary force main,
800 Megahertz communication system,
Master mitigation—conceptual permitting,
Mitigation program—engineering services,
Mitigation program—jurisdictional boundaries,
Completion of main terminal northeast corridor,
Part 150 study.

Brief Description of Projects Partially Approved for Collection and Use: Security improvement program.

Determination: The public agency did not adequately support costs for this project other than the matching share of the AIP–36 grant. Accordingly, the approved amount is less than that requested by the public agency.

Brief Description of Disapproved Projects: Exhibit A property map, FAA grant close-out.

Determination: Disapproved. Costs associated with these items are administrative costs specifically related to AIP projects. Allowable costs for the PFC program, defined in section 158.3 and further defined in the preamble to Part 158, identify ''a public agency's cost of administering its PFC program'' as allowable. These items are not required for PFC project approval or administration of the PFC program at Orlando International Airport; therefore, the projects are disapproved.

Closed circuit television (CCTV) retrofit.

Determination: Disapproved. This project has been determined to be ineligible under AIP criteria in accordance with appendix 2 of FAA Order 5100.38A, since the relocation of a control tower is not eligible. The use of the CCTV system mitigates the need to relocate the air traffic control tower for line-of-sight blockage. Accordingly, this project is disapproved.

Convert chillers to non-CFC refrigerant.

Determination: Disapproved. This project has been determined to be ineligible under AIP criteria in accordance with appendix 2 of FAA Order 5100.39A, as routine airport maintenance. Accordingly, this project is disapproved.

Decision Date: August 28, 1995.

For Further Information Contact: Pablo G. Auffant, Orlando Airports District Office, (407) 648–6583.

Public Agency: Gulfport-Biloxi Regional Airport Authority, Gulfport, Mississippi.

Application Number: 95–03–C–00–GPT.

Application Type: Impose and use PFC revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,518,400.

Estimated Charge Effective Date: September 1, 1995.

Estimated Charge Expiration Date: September 1, 1997.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construct concourse A,

Construct terminal improvement (phase I),

Master plan (wetlands),

Master plan (access),

Construct charter ramp (phase V–a),

Install loading bridge.

Decision Date: August 31, 1995.

For Further Information Contact: Elton Jay, Jackson Airports District Office, (601) 965–4628.

Amendments to PFC Approvals

Amendment No. City, State	Amendment approved date	Amendment approved net PFC revenue	Original approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
94–01–C–02–CVG, Covington, KY	08/01/95	$38,015,000	$23,847,550	10/01/95	06/01/96
93–01–C–01–BGM, Binghampton, NY	08/01/95	$887,261	$1,872,264	11/01/97	02/01/96
92–01–I–02–PHL, Philadelphia, PA	08/01/95	$51,199,000	$51,199,000	08/01/97	08/01/97
93–01–C–01–SGF, Springfield, MO	08/08/95	$3,110.598	$1,937,090	10/01/96	08/01/97
93–02–I–01–BDL, Windsor Locks, CT	08/18/95	$12,030,000	$1,599,000	09/01/95	12/01/95
92–01–I–01–CMH, Columbus, OH	08/23/95	$7,719,331	$7,341,707	09/01/96	01/01/96
93–01–C–01–LGB, Long Beach, CA	08/29/95	$0	$3,533,766	03/01/98	[1]

[1] Withdrawn.

Issued in Washington, D.C. on September 6, 1995.

Sheryl Scarborough,

Acting Manager, Passenger Facility Charge Branch.

[FR Doc. 95–22743 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chippewa Valley Regional Airport; Eau Claire, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chippewa Valley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 13, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Burt C. Wright, Airport Manager of the County of Eau Claire, WI at the following address: 3800 Starr Avenue, Eau Claire, WI 54703.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Eau Claire under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chippewa Valley Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 30, 1995 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Eau Claire was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: January 1, 1996

Proposed charge expiration date: July 31, 2005

Total estimated PFC revenue: $755,028

Brief description of proposed project(s): Terminal Building Renovation, Taxiway Apron Improvements (design only), Airport Snow Removal Vehicle, Taxiway B & C Reconstruction, SRE Building Expansion, Taxiway Apron Improvements (construction), Airport Snow Removal Vehicle, PFC Administration

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: No request to exclude carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Eau Claire.

Issued in Des Plaines, IL on September 6, 1995.

Ben De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 95–22741 Filed 9–12–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

United States Customs Service

Domestic Interested Party Petition Concerning Country of Origin Marking for Safety Glasses

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; extension of comment period.

SUMMARY: This document extends the period of time within which interested members of the public may submit comments regarding the application of the marking requirements to imported prescription safety frames. Customs has been requested to extend the comment period to allow additional time to prepare responsive comments. The comment period is extended to October 11, 1995.

DATES: Comments must be received on or before October 11, 1995.

FOR FURTHER INFORMATION CONTACT: David Cohen, Special Classification and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482–6980.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1995, a document was published in the **Federal Register** (60 FR 35792) containing a notice of the receipt of a domestic interested party petition regarding the country of origin marking requirements of prescription safety glasses as set forth in Headquarters Letter Ruling (HLR) 734258, dated January 2, 1992. The document solicited comments that were to be received on or before September 11, 1995. Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the proposed regulations and prepare responsive comment. In view of the complexity and importance of the petition and its effect on the country of origin marking of safety glasses, Customs believes that the request for an extension of time should be granted. Accordingly, the period of time for the submission of comments is being extended to October 11, 1995.

Approved: September 6, 1995.

Stuart P. Seidel,

Assistant Commissioner of Customs, Office of Regulations & Rulings.

[FR Doc. 95–22643 Filed 9–12–95; 8:45 am]

BILLING CODE 4820–02–P

[Treasury Order Number 100–06]

Delegation of Authority to the Under Secretary (Domestic Finance) for the Government Securities Act of 1986 and Government Securities Act Amendments of 1993

Dated: September 5, 1995.

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b), I hereby delegate to the Under Secretary (Domestic Finance), the authority of the Secretary under the Government Securities Act of 1986, (Pub. L. 99–571) and the Government Securities Act Amendments of 1993 (Pub. L. 103–202), to exercise and to perform all duties, powers, rights, and obligations under those Acts, with the authority to redelegate such authority.

This Order supersedes Treasury Order 100–06, ''Delegation of Authority to the Under Secretary for Finance to Implement the Government Securities Act of 1986,'' dated February 19, 1987.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 95–22744 Filed 9–12–95; 8:45 am]

BILLING CODE 4810–25–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 177

Wednesday, September 13, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the ''Government in the Sunshine Act'' (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, September 14, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 14, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1, Phase III); Treatment of Operator Services Under Price Cap Regulation (CC Docket No. 93–124); and Revisions to Price Cap Rules for AT&T (CC Docket No. 93–197). Summary: The Commission will consider proposals on how to modify its price cap regulations for local exchange carriers to reflect the emergence of competition, including pro-posals related to pricing flexibility and criteria for streamlining regulation.

2—Common Carrier—Title: Price Cap Performance Review for Local Exchange Carriers (CC Docket No. 94–1, Phase II). Summary: The Commission will consider revising proposals related to establishing a permanent method for determining the ''X'' factor for price cap local exchange carriers.

3—Common Carrier—Title: Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation (CC Docket No. 94–1). Summary: The Commission will consider issues concerning price cap regulation of video dialtone, and the possible creation and operation of a video dialtone price cap basket.

4—Wireless Telecommunications—Title: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool (PR Docket No. 89–553); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding (PP Docket No. 93–253); and Implementation of Sections 3(n) and 322 of the Communications Act (GN Docket No. 93–252). Summary: The Commission will consider petitions for reconsideration of the service rules for 900 MHz Specialized Mobile Radio (SMR) and adoption of auction rules for the licensing of the service.

5—Wireless Telecommunications—Title: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services (CC Docket No. 94–54). Summary: The Commission will consider whether commercial mobile radio services should be prohibited from restricting resale of their services.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureen Peratino, Office of Public Affairs, telephone number (202) 418–0500.

Dated September 7, 1995.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–22832 Filed 9–11–95; 2:17 pm]

BILLING CODE 6712–01–F

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on September 20, 1995, 8:30 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Field Office Closures—Recommendation 7 of Task Force Report

(2) Coverage Determinations:

A. San Diego Northern Railway

B. CAGY Industries, Inc.

C. Joliet Junction Railroad, Inc.

(3) Proposed Occupational Disability Standards

(4) Regulations—Part 219, Evidence Required for Payment

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: September 8, 1995.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–22853 Filed 9–11–95; 2:18 pm]

BILLING CODE 7905–01–M

Corrections

Federal Register

Vol. 60, No. 177

Wednesday, September 13, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

Correction

In notice document 95–21570 beginning on page 45402 in the issue of Thursday, August 31, 1995, make the following correction:

On page 45402, in the third column, in the **DATES** section, in the second and third lines, ''October 2, 1995'' should read ''October 30, 1995''.

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. FR-3917-N-16]

Notice of Submission of Proposed Information Collection to OMB

Correction

In notice document 95–20090 beginning on page 42171 in the issue of Tuesday, August 15, 1995, under **ADDRESSES:**, in the fourth line, ''(3)'' should read ''(30)''.

BILLING CODE 1505–01–D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432, 451 and 531

RIN 3206-AG34

Performance Management

Correction

In rule document 95–20745 beginning on page 43936 in the issue of Wednesday, August 23, 1995, make the following corrections:

1. On page 43937, in the 1st column, in the 2d paragraph, in the 20th line, ''associations, '' should read ''associations.''.

2.On the same page, in the 3rd column, in the 2d paragraph, in the 21st line, ''§541.104'' should read ''§451.104''.

3. On page 43939, in the first column, in the second line, ''OPM has'' should read ''OPM had''.

4. On page 43940, in the 1st column, in the paragraph 2. Summary Rating, in the 24th line, ''assigned with'' should read ''assigned when''.

5. On page 43941, in the third column, in the second paragraph, in the first line, ''*performance rating*'' should read ''*performance standard*''.

6. On the same page, in the same column , in the same paragraph, in the fourth line, ''*(Performance standard)*'' should read ''*(performance standard).*''

7. On page 43942, in the 1st column, in the 2d paragraph, in the 16th line, ''rules'' should read ''rules.''

8. On the same page, in the second column, in the fourth paragraph, in the ninth line, ''text:'' should read ''text.''.

9. On the same page, in the third column, in the fifth line, ''(b),'' should read ''(b);''. In the ninth line, ''*increase*)'' should read ''*increase*);''.

§ 430.201 [Corrected]

10. On page 43943, in the second column, § 430.201 (b), in the 4th and 5th and 14th lines, ''August 23, 1995'' should read ''September 22, 1995''.

§ 430.204 [Corrected]

11. On page 43944, in the first column, § 430.204 (b)(3)(iv), in the 3rd line, ''426.208(d)'' should read ''§ 430.208(d)''.

§ 451.101 [Corrected]

12. On page 43946, in the second column, § 451.101 (c), in the 3rd line, ''section 4501 title 5'' should read ''section 4501 of title 5''.

§ 451.103 [Corrected]

13. On the same page, in the third column, § 451.103(c)(2), in the 3rd line, ''§ 430.20'' should read ''§ 430.203''.

BILLING CODE 1505–01–D

Federal Register

Wednesday
September 13, 1995

Part II

Department of Justice

Bureau of Prisons

28 CFR Part 547
Special Food; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 547

[BOP–1044–P]

RIN 1120–AA37

Special Food

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to revise its regulations on the introduction into institutions of special food or meals from outside sources. The revised provisions state more clearly that the Bureau is responsible for procuring and preparing any food or food ingredients served to the institution's inmate population. Special food or meals which may be served to specific groups of inmates rather than to the entire inmate population are identified as commissary food items, religious diet or ceremonial meals, and medical diet foods. This amendment is intended to provide for the secure and orderly operation of the institution.

DATES: Comments due by November 13, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on special foods (28 CFR 547.20). A final rule on this subject was published in the **Federal Register** May 1, 1981 (46 FR 24901).

Current provisions in 28 CFR 547.20 specify that, with stated exceptions, the Bureau requires special food or meals prepared for and/or served to any group(s) of inmates also to be served to the institution's entire inmate population. In revising this section, the Bureau is emphasizing that it is responsible for procuring and preparing food or food ingredients to be served to the institution's inmate population. Any special food or meals to be distributed are therefore to be supplied by the Bureau. Food brought into the institution under an approved visiting program has consequently been removed from the list of exceptions, and the remainder of the stated exceptions have been revised for reasons of organization and clarity.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 547

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), it is proposed to amend part 547 in subchapter C of 28 CFR, chapter V as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 547—FOOD SERVICE

1. The authority citation for 28 CFR part 547 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 547.20 is revised to read as follows:

§ 547.20 Policy.

The Bureau of Prisons is responsible for procuring and preparing any food or food ingredients to be served to the institution's inmate population. Except as allowed for in paragraphs (a) through (c) of this section, the Bureau requires that special food or meals prepared for and/or served to any group(s) of inmates also be served to the institution's entire inmate population. Special food or meals, as identified in paragraphs (a) through (c) of this section, may be prepared and/or served to a specific group of inmates rather than to the entire inmate population of the institution.

(a) Food items sold in the institution's commissary.

(b) Religious diet or ceremonial meals (see 28 CFR 548.13).

(c) Medical diet foods.

[FR Doc. 95–22630 Filed 9–12–95; 8:45 am]

BILLING CODE 4410–05–P

Federal Register

Wednesday
September 13, 1995

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act (RESPA): Disclosure of Fees Paid to Mortgage Brokers (Retail Lenders), and Notice of Consideration of Negotiated Rulemaking; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. FR 3780–P–01]

RIN 2502–AG40

Real Estate Settlement Procedures Act (RESPA): Disclosure of Fees Paid to Mortgage Brokers (Retail Lenders), and Notice of Consideration of Negotiated Rulemaking

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule and notice of consideration of negotiated rulemaking process.

SUMMARY: The Department has developed a proposed rule presenting alternative approaches to the disclosure of fees to retail lenders and other matters relating to such fees that are addressed in HUD's current regulations implementing the Real Estate Settlement Procedures Act (RESPA). Under this proposed rule, the Department specifically seeks comments on whether the disclosure of indirect fees paid to mortgage brokers is useful to the consumer and should continue to be required. Disclosure of direct charges imposed upon the borrower or seller is clearly required under Section 4 of RESPA and is not the subject of this proposed rule.

The Department also has commenced the convening process to determine whether to establish a committee for negotiated rulemaking on this proposed rule. If negotiated rulemaking appears desirable and feasible, then the Department expects to undertake the establishment of such a committee by publication of a separate notice in the **Federal Register**. If a negotiated rulemaking committee is formed, the public comments concerning the substance of this proposed rule will be given to the committee for consideration in its deliberations. If it is determined that a committee is not appropriate, the comments submitted on this proposed rule will be used by the Department in promulgating a final rule.

DATES: Comment due date: November 13, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule, the feasibility of forming a negotiated rulemaking committee, and suggestions for committee participation to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement, Room 5241, Department of Housing and Urban Development, Washington, DC 20410; telephone 202–708–4560; or (for legal questions) Grant E. Mitchell, Senior Attorney for RESPA, Room 10252, Department of Housing and Urban Development, Washington, DC 20410; telephone 202–708–1552 (these are not toll free numbers). Hearing or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TDD, which is a toll-free number).

SUPPLEMENTARY INFORMATION: The current RESPA regulations make clear that ''secondary market transactions'' are not covered by most provisions of RESPA: ''a bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except as set forth in section 6 of RESPA and § 3500.21 [mortgage servicing transfers].'' The current rule details certain tests for what does or does not constitute a secondary market transaction. The Department seeks comments on its classifications of mortgage loan transactions under the current rule as ''primary funding'' or ''secondary market'' transactions and, in particular, on whether the Department has drawn the line in the appropriate place between a primary funding and a secondary market transaction.

The Department also seeks comments on aspects of its current regulations that provide, *inter alia,* that all fees paid to mortgage brokers, either directly or indirectly, must be disclosed on the Good Faith Estimate and the HUD–1 or HUD–1A, which are furnished to borrowers/consumers. Specifically, the Department seeks comments on its determination that the disclosure requirement for ''all charges imposed on the borrower'' includes fees paid to the mortgage broker by the lender, because all charges are ultimately borne by the borrower. Finally, the Department, in this proposed rule, also requests comments regarding a related issue: whether certain compensation by lenders to mortgage brokers normally paid after settlement, based on the volume of loans produced, should be permitted and disclosed under RESPA.

I. Certain Definitions in Proposed Rule

In this proposed rule, mortgage brokers [1] and certain other mortgage originators are frequently referred to as ''retail lenders.'' Entities that purchase mortgage loans are frequently referred to as ''wholesale lenders.'' In any event, the description of the lender is not dispositive of whether the transaction is covered by the rule. The proposed rule would apply to a transaction based on the characteristics of that transaction, rather than on whether the lender generally functions in a retail or a wholesale capacity.

II. RESPA Coverage

A. Background

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*) (RESPA) was enacted for several purposes, ''including insuring that a consumer engaged in a real estate settlement is afforded effective information about the transaction in a timely manner.'' In addition, the Congress sought to address specific abusive settlement practices that had developed in certain areas of the country. In this proposed rule, HUD is seeking public input on specific disclosure-related issues, including where the lines should be drawn to determine whether RESPA applies.

Since 1974 the mortgage lending industry has experienced a rapid evolution. This industry has experienced major technological advances—new and different kinds of business entities have entered the field, and new business relationships have emerged among the various entities that serve the consumer in a single lending transaction. Much of the change that has occurred is attributable to the growth of the secondary market during the 1980s.

Prior to the 1980's, a mortgage loan transaction was relatively easy to understand. A lender (*e.g.*, a savings and loan, mortgage bank, or commercial bank) typically processed a loan from

[1] The historical discussion in this proposed rule uses the term ''mortgage broker'' because this is the terminology that the Department used in addressing the issue in both the informal opinion and regulatory context. Section 3500.4(d) of the current RESPA rule withdrew all previous informal legal opinions, in particular a letter of August 14, 1992, issued by a former General Counsel of HUD, which dealt extensively with the disclosure of mortgage broker fees and the manner in which such fees should be disclosed on the HUD–1. This preamble uses the term ''retail lender'' whenver feasible in discussing the proposed rule and when the discussion does not clearly require the use of the term ''mortgage broker.''

start to finish. The loan application was processed, evaluated, and underwritten by the lender's own employees. The loan was funded by and closed in the lender's name. The loan was usually held in the lender's portfolio of loans, and any activities regarding the loan (receiving and crediting the payments, paying out monies from an escrow account, etc.—sometimes called ''servicing'') were handled by that lender. Sometimes the loan was sold to another entity, in a ''secondary market'' transaction that was a precursor of today's more sophisticated secondary market transactions.

By the end of the 1970s and into the early 1980s, two Government-sponsored enterprises (Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)) had developed into major purchasers of mortgages from original lenders. By the early 1980s, these secondary market entities not only bought mortgage loans, but repackaged many of these loans and sold them as mortgage-backed securities and, with the liquidity created, were able to be even greater purchasers of lenders' mortgage loans. By 1994, Fannie Mae and Freddie Mac were purchasing or otherwise dealing in more than 70 percent of all the conventional 1- to 4-family residential mortgage loans originated in the United States.

Today, the retail lender that works with the consumer to process and close a mortgage loan often is not the entity that will hold or service the loan. Rather, the retail lender serves as an intermediary between the consumer and the entity purchasing or servicing the loan (or ''wholesale lender''). Many loans are purchased by, or servicing is transferred to, a wholesale lender at, or shortly after, closing. When a retail lender serves as an intermediary, it may perform services for which it is compensated in processing the loan. Compensation paid to a retail lender therefore may be ''direct'' and ''indirect.'' Direct payments are fees paid directly by the consumer and must be disclosed under Section 4 of RESPA; indirect payments are fees paid by the wholesale lender to the retail lender. The issue arises over whether the amount and nature of indirect compensation should be disclosed to the consumer. HUD has been presented with arguments that the current RESPA rule, which requires disclosure of all indirect payments to mortgage brokers, focuses too narrowly on this particular class of retail lenders or intermediaries. These arguments suggest that the underlying issues for discussion should be how RESPA's fee disclosure requirements should apply to compensation of mortgage brokers, mortgage bankers, and other financial institutions that originate mortgages (retail lenders) by entities that purchase their mortgages (wholesale lenders).

B. Legal Analysis Under the Current Regulation

Section 4(a) of RESPA (12 U.S.C. 2603(a)) requires the Secretary to create a uniform settlement statement that ''shall conspicuously and clearly itemize all charges imposed on the borrower * * * and the seller in connection with the settlement.'' The stated purposes of the statute include the provision of ''greater and more timely information as to the nature and costs of the settlement process'' by ''more effective advance disclosure to homebuyers and sellers of settlement costs * * *'' (12 U.S.C. 2601). Section 5(c) (12 U.S.C. 2604(c)) of RESPA requires the provision of a ''good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement. * * *''

Under HUD's current rules, the disclosure of all fees paid to retail lenders, including all compensation from wholesale lenders, is required when the retail lender is being compensated as part of the settlement transaction. This position is set out, *inter alia*, at 24 CFR 3500.5(b)(7); in the Instructions for filling out the HUD–1 and HUD–1A in Appendix A; and in Illustrations of Requirements of RESPA, Fact Situations 5 and 12 in Appendix B. This same disclosure requirement has not been applied to subsequent purchases of loans by wholesale lenders, on the theory that Congress only intended to cover costs related to the initial settlement transactions. The Department's current regulations, therefore, treat compensation to the retail lender under three settlement situations somewhat differently, depending upon how the loans are funded at settlement.

(1) Loan Closing and Subsequent Assignment of the Loan. This is a transaction in which a retail lender processes the loan from start to finish, funds the loan, and closes the loan in its own name. The current RESPA regulation requires that such retail lenders disclose the fees paid by the consumer. At a later point in time, the retail lender may sell the loan to a wholesale lender. The Department has not required that the terms of this subsequent secondary market transaction, including compensation paid to the retail lender by a wholesale lender, be disclosed to the consumer.

(2) Loan Closing in the Wholesale Lender's Name Using the Wholesale Lender's Funds. For this arrangement, the retail lender originates the loan, but is functioning solely in the capacity of an intermediary. The loan funds are provided by the wholesale lender and the loan is closed in the wholesale lender's name. The wholesale lender typically sets the underwriting criteria and makes the underwriting decision. In this instance, the current RESPA regulation applies to the entire fee arrangement between the retail lender and the wholesale lender. The Department regards the retail lender as being compensated as part of the settlement transaction. Indirect, as well as direct, payments to the retail lender must be disclosed under the current RESPA regulations.

(3) Table-funding. For this arrangement, the loan is processed by the retail lender and is closed in the name of the retail lender. There is, however, at or about the time of settlement, a simultaneous advance of loan funds to the retail lender by the wholesale lender and an assignment of the loan and servicing rights to the wholesale lender. Table-funding is therefore somewhat a hybrid of the two arrangements described above. As in situation (1), where the Department requires disclosure of the compensation at settlement, the loan is closed in the name of the retail lender. There is a subsequent assignment of the loan to the wholesaler. Thus, an argument could be made that the assignment constitutes a secondary market transaction, for which the terms (*i.e.*, concerning the retail lender's indirect compensation) are not required to be disclosed under the RESPA regulations. On the other hand, because the mortgage broker assigns the loan simultaneously with closing, it may be asserted that the mortgage broker acts only as an intermediary, as in situation (2).

HUD has consistently determined, in opinions of the General Counsel going back to 1986 and in the final RESPA rule published on November 2, 1992 (57 FR 49600, and restated on February 10, 1994 (59 FR 6506)), that compensation received by a mortgage broker in a table-funded transaction is subject to disclosure. This interpretation treats mortgage brokers in table-funded transactions as *settlement service providers* ancillary to the loan, akin to title agents, attorneys, appraisers, etc., whose fees are subject to disclosure. This interpretation does not view a mortgage broker as the functional equivalent of a mortgage lender. Unlike a mortgage lender, the mortgage broker in a table-funded transaction does not

close the loan with its own funds. Conversely, a mortgage broker using its own funds, or with a ''warehouse'' line of credit for which it is liable, is not viewed as a mortgage broker, but rather as a mortgage lender under the extant HUD interpretation. The salient criterion for this conclusion is the source of funds. HUD's interpretation, embodied in the current RESPA regulations, has given rise to some controversy, as set forth in Section C of this preamble. In light of this controversy, the Department has elected to revisit and invite public comment on these issues. However, the Department wishes to stress to all concerned parties, and particularly to Federal and State regulators, that the Department's willingness to reexamine the issue does not affect the provisions of the current rule as now effective, unless and until modified. All affected parties should continue to make full disclosure of all direct and indirect compensation, as required by the current RESPA rule.

C. Criticism of Existing Policy

(1) HUD's Interpretation of the RESPA Statute is Incorrect. Opponents argue that the Department's interpretation of RESPA's disclosure requirements (''all charges imposed upon the borrower * * *'') to include indirect charges and payments from the borrower funds is too expansive and beyond the scope of the statute. They argue that all charges imposed on the borrower are fully included in direct charges. Indirect compensation need not be separately enumerated because it is already reflected in those direct charges. For example, the wholesale lender pays a retail lender fees from income received from the interest rate, points and other direct fees. Separate enumeration constitutes a redundancy, and combining direct and indirect costs overstates the total cost of the loan. Moreover, since the borrower is aware of the borrower's cost for the mortgage loan, no useful purpose is served by disclosing indirect charges reflected in points, interest rate, etc.

Second, opponents argue that a table-funded loan should be treated as a secondary market transaction. They maintain that such a transaction is the functional equivalent of a loan made by another type of lender, *e.g.*, a mortgage banker, who has an advance commitment to sell the loan shortly after settlement.

(2) HUD's Interpretation of the Statute Treats One Class of Participants Unfairly. First, mortgage brokers argue that an unlevel playing field is created, because mortgage bankers need not disclose the terms of a subsequent sale of the loan (although they do disclose origination fees and points, as well as other direct costs); mortgage brokers must effectively do so for table-funded transactions.

Second, by concluding that mortgage brokers engaged in table-funded transactions are not subject to the secondary market exemption, the Department has put an additional burden of scrutiny on these mortgage broker fees by making them subject to requirements of Section 8 of RESPA, which requires that all compensation be reasonably related to goods or services provided. The same scrutiny does not apply to the sales transactions of other originators that sell their loans to wholesale lenders following settlement.

(3) HUD's Interpretation of the RESPA Statute is Poor Public Policy. Opponents argue that retail lenders (particularly mortgage brokers) play an important role in making financing more available to ''nontraditional'' borrowers. They argue that HUD's interpretation, insofar as it places retail lenders at a competitive disadvantage, is not consistent with public policy designed to expand access to mortgage credit for such nontraditional borrowers.

Opponents also suggest that HUD's policy often requires retail lenders to spend added time and resources explaining the nature of indirect fees to a consumer. Occasionally, a consumer, or even an employee of a retail lender, will attempt to negotiate for a share of the fees paid to the retail lender.

D. Other Considerations and Concerns

(1) The fundamental premise underlying RESPA is that disclosure of information empowers the consumer to shop for better services and lower costs. All fees and charges, other than seller contributions, are ultimately borne by the borrower, whether by direct payments, such as points, or by indirect payments through a higher interest rate that the borrower pays over time. However, the seller also has a fundamental interest in this process, because the seller, particularly in difficult markets, is asked to absorb an increasingly greater part of the settlement costs. Knowledge of all fees, including those paid to a retail lender, may allow consumers to negotiate reductions in overall costs of the transaction.

(2) The Housing and Community Development Act of 1992 (Pub. L. 102–550; 106 Stat. 3672, at 3874) extended RESPA to junior lien transactions and confirmed the Department's position that refinancing transactions were covered by RESPA. As of August 9, 1994, the same principles of disclosure of indirect fees paid to mortgage brokers were extended to junior lien transactions. Refinancing and junior lien transactions are frequently advertised on a ''no point'' or ''no cost'' basis, which effectively means that all or much of the ancillary costs and charges of making the loan are contained in the interest rate or in a combination of the interest rate and the points. The consumer typically has a somewhat lesser interest in points and mortgage broker fees, in part because, unlike a purchase money transaction, points may only be amortized and deducted for Federal and State tax purposes over the life of the loan.

The high level of competitiveness through advertising and other publicity in the first mortgage industry, aided by the borrowers' interest in being able to make full IRS deductions, have helped assure that many of the costs of making a mortgage loan have been highly visible. However, while the Department has had extensive experience with purchase money and other first mortgage 1- to 4-family residential loans, because RESPA has only covered junior lien transactions since August 9, 1994, the Department has no comparable range of experience respecting junior lien transactions, which frequently are regulated and limited under different Federal or State laws and are funded by different institutions or branches of institutions. Therefore, the Department welcomes policy or legal commentary regarding the possibility of having one provision for first mortgage transactions and a second provision for junior lien transactions, or whether the Department should treat junior lien transactions made by retail lenders in the same manner as first lien purchase money and refinancing transactions.

(3) Under the statutory or judicial interpretations of the laws of several States, mortgage brokers are treated as agents of the consumer and are considered to have a fiduciary duty to disclose all fees that the mortgage broker obtains from the transaction. In Virginia, a case brought by the Virginia Poverty Law Center was settled when the major mortgage company agreed to restitution of certain fees collected by mortgage brokers, but without answering the fiduciary question. In California, where the courts have adopted the agency theory, the Department of Real Estate has implemented this requirement by creating a combined good faith estimate and mortgage broker disclosure form, thereby requiring all mortgage brokers (who close as many as 50 to 60 percent of all loans in the State) to disclose all direct, indirect, or anticipated mortgage

broker compensation. Because RESPA defers to State laws that provide more benefits to the consumer, any new interpretation by the Department will arguably not affect State provisions that provide for such direct and indirect mortgage broker fee disclosures. Also, while the Department has been informed that several class action law suits have been filed regarding the issue of payment of ''overages'' to mortgage brokers, the Department is not a party to these suits and is unaware of any effect an interpretation by the Department might have on the actions.

E. Possible Results of This Rulemaking

As a result of this rulemaking, HUD could establish uniform disclosure requirements for all retail lenders, either: (1) to require the disclosure of all direct fees paid to retail lenders by borrowers *and* to require disclosure of all indirect fees paid to retail lenders by wholesale lenders; or (2) to require the disclosure of all direct fees paid to retail lenders by borrowers only. In addition to, or instead of, modifying the rules on disclosure of fees in loan transactions, as a result of this rulemaking HUD may redefine what constitutes a ''secondary market transaction''. As set forth above, such transactions are exempt from RESPA, including, *inter alia*, its disclosure requirements, its prohibitions against kickbacks and referral fees, and its requirement that all compensation be reasonably related to the goods or services provided. HUD could define a ''secondary market transaction'' as a loan transaction involving: (1) the sale of a loan by a retail lender to a wholesale lender occurring after settlement (the position in the current regulations); (2) the sale of a loan by a retail lender at any time—before, contemporaneous with, or after settlement; or (3) the sale of a loan on some other date, such as after the first accrual date for the loan following settlement; *i.e.*, the date the first payment is due from the borrower under the loan.

Combining the two options of requiring either disclosure of direct and indirect fees, or disclosure of direct fees only, with the three possibilities for defining the secondary market transaction results in six alternative approaches to regulating settlement transactions under RESPA. Each of these six alternatives would have a different effect on each of the major types of loan transactions described above, including: (1) Loan closing and subsequent assignment of the loan; (2) loan closing in the wholesale lender's name using the wholesale lender's funds; and (3) table-funding. None of these alternatives will affect a fourth type of transaction—a portfolio transaction in which a retail lender processes, funds, and closes a loan in its own name for its own portfolio and the lender then holds the loan (if the loan is sold at all, the sale occurs long after settlement). Each of these alternatives or combinations of requirements is discussed below, along with its effect on each type of loan transaction. The public is specifically invited to comment on these six alternatives, as well as other approaches.

Alternative 1: The regulations would require the disclosure of direct and indirect fees at settlement, and a loan sale is classified as a ''secondary market transaction'' only if it occurs after settlement. This is the approach in the current RESPA rule. Under this alternative, the direct fees for a portfolio lender at settlement must be disclosed and the settlement transaction is subject to RESPA, there are no indirect fees, and any subsequent loan sale by the lender when indirect fees are paid is a secondary market transaction not subject to RESPA. Likewise, the direct fees for a retail lender at settlement, in other transactions involving a loan closing and subsequent assignment of the loan, must be disclosed, but any loan sale after settlement is a secondary market transaction not subject to RESPA (any indirect fees need not be disclosed and RESPA's other restrictions do not apply). In a table-funded transaction, the advance of loan funds to the borrower and the sale of the loan by the retail lender to a wholesale lender are contemporaneous with settlement. Accordingly, all direct and indirect fees to the retail lender must be disclosed under RESPA and the entire transaction—the making of the loan to the borrower and the loan sale—are subject to RESPA. Similarly, in a settlement transaction in the name of a wholesale lender—where there is no sale following settlement—all direct and indirect fees to and from the retail lender and the wholesale lender must be disclosed, and the entire transaction is otherwise subject to RESPA.

Alternative 2: The regulations would require the disclosure of direct and indirect fees at settlement, and any loan sale—before, contemporaneous with, or after settlement—is classified as a ''secondary market transaction''. Under this alternative, although disclosure of direct and indirect fees would be required for RESPA-covered transactions, more loan sales would be treated as ''secondary market transactions'' exempt from RESPA's coverage. As in Alternative 1, the direct fees to a portfolio lender at settlement must be disclosed, but any subsequent loan sale would be a secondary market transaction exempt from RESPA's disclosure and other requirements. Also, as in Alternative 1, the direct fees for other transactions involving a loan closing and subsequent assignment of the loan would have to be disclosed, but a subsequent loan sale would be a secondary market transaction exempt from RESPA. Unlike Alternative 1, the sale at settlement of a table-funded loan would also become a secondary market transaction exempt from RESPA's requirements and prohibitions. Indirect fees would not have to be reported and would not be covered by RESPA. Under a settlement transaction in the name of a wholesale lender, however, all direct and indirect fees to and from the retail lender and the wholesale lender would require disclosure, because there is no loan sale or secondary market transaction involved.

Alternative 3: Regulations require the disclosure of direct and indirect fees at settlement, and only loan sales following the first accrual—the date the first payment is due from the borrower under the loan—are ''secondary market transactions''. Under this alternative, RESPA's disclosure and other requirements would cover more transactions; only loan sales transactions that occur relatively long after settlement would be regarded as secondary market transactions exempt from RESPA's requirements. Under this alternative, loan sales by a portfolio lender—coming, if at all, well after the first loan payment—would be regarded as secondary market transactions. RESPA's disclosure requirements and restrictions would apply to a loan closing and subsequent assignment of the loan, unless the loan is sold after the first accrual date (currently, in most transactions the loans are sold much earlier). RESPA's prohibitions would apply to table-funded transactions when the loan is sold at settlement and transactions when a loan is closed in the name of a wholesale lender and there is no subsequent loan sale.

Alternative 4: Regulations require the disclosure of only direct (not indirect) fees at settlement, and a loan sale is classified as a ''secondary market transaction'' only if it occurs after settlement. This alternative differs from the current rule in requiring the disclosure only of direct fees from borrowers to retail lenders. Under this alternative, because there is no requirement for the disclosure of any indirect fees to retail lenders for loan sales, the classification of such sales as secondary market transactions is only determinative of whether RESPA's

requirements and prohibitions (other than disclosure) apply to the transaction. Under this alternative, direct fees to retail lenders must be disclosed in portfolio transactions, other transactions involving a loan closing and subsequent assignment of the loan, table-funding transactions, and transactions in which a retail lender closes in the name of a wholesale lender (including any direct fees to the wholesale lender). Because retail lenders in portfolio transactions and other transactions involving a loan closing and subsequent assignment of the loan sell their loans after settlement, such sales would be subject to the secondary market exemption and outside of RESPA. Because loan sales in table-funded transactions occur at and not after settlement, under this alternative, such sales transactions would not be secondary market transactions and would be subject to RESPA (although indirect fees need not be disclosed). Also, because a loan in the name of a wholesale lender occurs at settlement and there is no subsequent sale, the retail and wholesale lender's transaction would be subject to RESPA's prohibitions.

Alternative 5: Regulations require the disclosure of only direct (not indirect) fees at settlement, and a loan sale, at any time, is classified as a ''secondary market transaction''. Under this alternative, direct fees to retail lenders must be disclosed in portfolio transactions, other transactions involving a loan closing and subsequent assignment of the loan, and table-funding transactions, as well as transactions in which retail lenders close in the name of a wholesale lender. Any loan sales (following settlement) by portfolio lenders, or under another transaction involving a loan closing and subsequent assignment of the loan, would be secondary market transactions outside of RESPA's coverage. Under this alternative, a loan sale (at settlement) in a table-funded transaction would also be a secondary market transaction. However, settlement in the name of the wholesale lender not involving a sale, would not be subject to the exemption—RESPA would apply to the entire transaction although indirect fees need not be disclosed.

Alternative 6: Regulations require the disclosure of only direct (not indirect) fees at settlement, and a loan sale is classified as a ''secondary market transaction'' only if it occurs after the first accrual date. Under this alternative, direct fees to a retail lender must be disclosed in a portfolio transaction; a transaction involving a loan closing and subsequent assignment of the loan; a table-funding transaction; and a transaction in which a lender closes in the name of another lender. Although indirect fees need not be disclosed, RESPA's other requirements would cover more transactions, because fewer transactions would be regarded as secondary market transactions. The exception is a loan sale by a portfolio lender, which, when it occurs, would follow the first accrual date and would, therefore, still be regarded as a secondary market transaction. Loan sales transactions by retail lenders in other transactions involving a loan closing and subsequent assignment of the loan and in table-funded transactions would not be regarded as secondary market transactions and would be subject to RESPA. Settlement in the name of the wholesale lender, because it does not involve a sale, would not be subject to the exemption and RESPA's provisions would also apply to the entire transaction.

HUD seeks comments from the public on which, if any, of these alternative approaches should result from this rulemaking, or whether other approaches that would be permissible under RESPA would better serve the interests of the public and the intent of the statute.

II. Volume-Based Compensation

Volume-based compensation is a payment of money or any other thing of value, as defined by 24 CFR 3500.14(d), that a wholesale lender provides to a retail lender and is based on a number or dollar value of loans that the retail lender sells to the wholesale lender in a fixed period of time.

Volume compensation also encompasses volume discounts, in which a retail lender that is to provide a stated volume of loans is given a lower ''start-rate'' than the wholesale lender's advertised rate and the retail lender keeps a differential between the start rate and the advertised rate as part of its compensation at settlement.

The Department believes that volume-based compensation is a fairly widespread practice, particularly in California. As noted above, California regulatory requirements provide for disclosure to borrowers of this compensation (the amount, if known, or its potential for receipt by the mortgage broker). HUD has never enunciated a formal policy on whether volume-based compensation is permissible under RESPA. If the Department concludes that it is allowable, the issue also arises as to whether and how the payment should be disclosed on the Good Faith Estimate and the HUD–1 and HUD–1A.

A. Should Volume-Based Compensation be Permitted?

Critics argue that volume-based compensation may lead to loan-steering. Arguably the consumer's interest (in seeing a range of loan options) may be subordinated to the interest of the retail lender in receiving greater compensation from a particular wholesale lender.[2] Also, as discussed earlier in this preamble, Section 8 of RESPA prohibits payments in the absence of ''goods or facilities furnished or for services actually performed.'' Therefore, awarding additional compensation for loans closed above a threshold number, where no added services are provided, could, standing alone, violate RESPA.

On the other hand, others argue that volume-based compensation may be an appropriate payment for goods or services actually performed. Wholesale lenders must exercise careful oversight over retail lenders, because decisions by the retail lender can expose the wholesale lender to default risk. For this reason, wholesale lenders typically perform some underwriting review for each mortgage. There also must be a good working relationship between the staffs of the retail and wholesale lender to ensure that important matters, such as document transfer and the handling of escrow funds, are accomplished smoothly and punctually. Establishing this working relationship and oversight involves some fixed costs to the wholesaler, which decrease on a per loan basis as the volume of business increases. The wholesale lender's variable costs may also decrease with increased volume, because the retail lender becomes more familiar with the requirements of the wholesale lender and the wholesale lender's staff is more familiar with the product and practices of the retail lender. Declining per-unit costs may justify volume compensation.

The consumer may benefit from volume-based compensation. In competitive markets, price concessions from wholesale lenders to high-volume retail lenders generally get passed along to the consumers. To obtain the volume of business needed to obtain price concessions and to benefit from volume-based compensation, the retail lender may pass along part of the high-volume benefits to the consumer, through lower points or other cost savings.

Critics argue that if the retail lender originates in its own name, the consumer is generally unaware that the

[2] Retail lenders who fail to present a full range of loan options to all consumers may risk charges of discriminatory treatment on a prohibited basis, which is unlawful under the Fair Housing Act.

retail lender has wholesale options available and may not even be consciously aware of the retail lender's intention to sell the mortgage. In this context, steering does not exist in the typical sense, that is, advising the consumer to choose lender A over lender B when lender B's prices are as good as, or better than, lender A's prices. It is also conceivable that wholesale lender X may not offer a loan product that wholesale lender Y offers, such as a 15-year adjustable rate mortgage (ARM). The retail lender may influence the consumer not to select the 15-year ARM so that the retail lender can increase its business with lender X, which offers volume compensation. However, most wholesale lenders offer a comparable range of products.

In addressing the policy issues of whether and how volume-based compensation should be permitted and, if so, disclosed, a commenter may offer legal arguments as to whether RESPA prohibits the practice.

B. Is Volume-Based Compensation Subject to Disclosure?

A retail lender required to make disclosure could argue that HUD has created an ''uneven playing field'' between mortgage bankers and other retail lenders, inasmuch as the issue of volume-based compensation is not relevant for mortgage banker transactions. (See Section II.C.(2) of this preamble.)

If HUD decides to allow this kind of compensation, practical questions are raised about how to disclose this information—what numbers should be disclosed? At the time of a given closing, a retail lender may not know whether a volume-based payment will be received or how much it will be. As noted above, the California standard Good Faith Estimate and Mortgage Broker Fee Disclosure form requires the disclosure of the compensation, if known, or an indication that a mortgage broker will receive additional compensation.

III. Other Compensation

In addition to volume-based compensation, retail lenders also receive compensation from wholesale lenders under a variety of names, the most common of which are ''servicing release premiums'' and ''yield spread premiums'' (which are cited by name in the current RESPA regulation as compensation to be disclosed; 24 CFR part 3500, Appendix A, Fact Situation 12.) Such compensation is also included in ''rate differentials,'' ''indirect payments,'' or ''back-funded payments'' (occasionally called ''back-end points'') in Appendix A instructions for filling out the HUD–1A. A ''yield spread premium'' or ''yield spread differential'' or ''overage'' means any compensation paid to or retained by a retail lender based upon the difference in the interest rate provided in the sold loan and some other benchmark interest rate. It compensates the retail lender for a loan priced at a rate higher than the rate at which the wholesale lender would otherwise have been willing to accept the loan. A ''servicing release premium'' is any compensation paid to a retail lender for the release of rights to service the loan.

The names of the fees (those cited in the previous paragraph may vary) are not definitive or dispositive. The concerns of the Department regarding such forms of compensation are similar to those expressed regarding volume-based compensation; that is, do those fees constitute kickbacks or fee-splitting for delivery of the loans. Commenters are invited to address: (a) whether any such types of compensation should be permissible under RESPA; and (b) what would be the effect of requiring disclosure of such payments.

IV. Proposed Amendments to 24 CFR Part 3500

In this proposed rulemaking HUD is requesting comment on several questions that may lead to new regulatory language in 24 CFR part 3500. For example, several new definitions are proposed for inclusion in § 3500.2. In addition, § 3500.14(g) would be revised to address explicitly the applicability of RESPA to volume-based compensation, and Appendix B, Fact Situation 12, could be modified. HUD may also need to modify the HUD–1 and HUD–1A instructions regarding payments to mortgage brokers. If new definitions are adopted, other definitions may need to be modified for consistency. While the Department has set forth illustrative changes in the definitions, it has not attempted to provide alternative regulatory text for every possible amendment that might result from this rulemaking. Instead commenters are invited to comment on the questions raised in this preamble and provide input on the direction they believe the Department should take on these matters.

If a determination is made that regulatory changes should be developed through a negotiated rulemaking process, the Department expects to publish another proposed rule at the conclusion of the negotiation process and will provide the negotiating committee with the comments submitted in response to today's proposed rule. If negotiated rulemaking is not used, the Department will formulate its final rule after reviewing the comments received in response to this proposed rule.

V. Other Relevant Issues

(a) Recent Legislation. In 1994 Congress enacted the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160, September 23, 1994) (the Act), which includes, as Subtitle B, the Homeownership and Equity Protection Act of 1994. Subtitle B requires the Federal Reserve Board to require additional levels of disclosure in certain circumstances, and requires for its computations inclusion of all compensation paid to mortgage brokers, including both direct and indirect payments, in order to determine if the loan will be a ''high-rate mortgage.'' (See section 152(a)(4)(B) of the Act.) If HUD ultimately determines that indirect fees need not be disclosed in a final rule, the Federal Reserve Board (which relies on information contained in HUD's Good Faith Estimate and the HUD–1 or HUD–1A forms) might have to require its own cost disclosure form in order to determine coverage. Accordingly, HUD plans to invite staff of the Board to comment on the proposed rule. The public is also welcome to address this matter.

(b) Impact of Regulation on State Laws. Whatever HUD determines in final rulemaking, it is possible that a State may have more stringent disclosure requirements than HUD. Under RESPA, State laws that provide greater protection to the consumer would prevail and would not be preempted by HUD requirements. Of course, a salient issue embraced within this proposed rulemaking is whether more disclosure is, in fact, beneficial to consumers. In addressing the alternative proposals in this rulemaking, a basic question for commenters is whether disclosure of the terms of a mortgage loan (e.g., interest rates and points) alone is sufficient consumer information.

VI. Other Matters

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, Room

10276, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not have significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of this proposed rule with regard to small entities, nor are there any unusual procedures that would need to be complied with by small entities. The requirements of the Real Estate Settlement Procedures Act must be uniformly adhered to by all lenders and servicers.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (U.S.C. 4332). The finding is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. Promulgation of this rule clarifies the coverage of the applicable regulatory requirements.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 24 CFR part 3500 is proposed to be amended to address the regulatory questions raised in the preamble and as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for Part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*

2. Section 3500.2 is amended by adding in alphabetical order definitions for ''Direct fee'', ''Indirect fee'', ''Retail lender'', ''Secondary market transaction'', ''Volume-based compensation'', and ''Wholesale lender'', to read as follows:

§ 3500.2 Definitions.

* * * * *

Direct fee means any payment made by a borrower to a lender or any other settlement service provider or to a third party, to be transmitted to a lender or any other settlement service provider, in connection with a settlement of a federally related mortgage loan.

* * * * *

Indirect fee means any payment made by a wholesale lender to a retail lender for services rendered in connection with a federally related mortgage loan origination. [Indirect loan fees are not subject to disclosure on the Good Faith Estimate or the HUD–1 or HUD–1A.]

* * * * *

Retail lender means a person who originates and sells a federally related mortgage loan to a wholesale lender.

Secondary market transaction means a sale of a federally related mortgage loan. A secondary market transaction [as defined by one of the alternatives set out in the preamble of this proposed rule] [is/is not] covered by RESPA and this part, except as set forth in Section 6 of RESPA (12 U.S.C. 2605) and § 3500.21.

* * * * *

Volume-based loan compensation means any added payment or additional thing of value provided by a wholesale lender to a retail lender to a retail lender based on the number or dollar value of loans originated.

Wholesale lender means a person who purchases a mortgage loan from a retail lender.

Dated: August 11, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. 95–22691 Filed 9–12–95; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday
September 13, 1995

Part IV

The President

Presidential Determination No. 95–41 of September 8, 1995—Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Federal Register
Vol. 60, No. 177
Wednesday, September 13, 1995

Presidential Documents

Title 3—

The President

Presidential Determination No. 95–41 of September 8, 1995

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination made by me on September 8, 1994 (59 FR 47229), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 1995.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

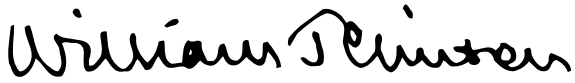
Therefore, pursuant to the authority vested in me by section 101(b) of Public Law 95–223, I extend for one year, until September 14, 1996, the exercise of those authorities with respect to countries affected by:

(1) the Foreign Assets Control Regulations, 31 CFR Part 500;

(2) the Transaction Control Regulations, 31 CFR Part 505; and

(3) the Cuban Assets Control Regulations, 31 CFR Part 515.

The Secretary of the Treasury is directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 8, 1995.

[FR Doc. 95–22934
Filed 9–12–95; 8:45 am]
Billing code 4810–31–M

Federal Register

Wednesday
September 13, 1995

Part V

The President

Proclamation 6821—To Establish a Tariff-Rate Quota on Certain Tobacco, Eliminate Tariffs on Certain Other Tobacco, and for Other Purposes

Federal Register
Vol. 60, No. 177
Wednesday, September 13, 1995

Presidential Documents

Title 3—

The President

Proclamation 6821 of September 12, 1995

To Establish a Tariff-Rate Quota on Certain Tobacco, Eliminate Tariffs on Certain Other Tobacco, and for Other Purposes

By the President of the United States of America

A Proclamation

1. (a) On April 15, 1994, I entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations (''the Uruguay Round Agreements''), including the Agreement Establishing the World Trade Organization (''the WTO Agreement'') and the General Agreement on Tariffs and Trade 1994 (''the GATT 1994''), annexed to the WTO Agreement. In section 101(a) of the Uruguay Round Agreements Act (''the URAA'') (Public Law 103–465, 108 Stat. 4814)(19 U.S.C. 3511(a)), the United States approved the Uruguay Round Agreements. These agreements entered into force for the United States on January 1, 1995.

(b) Section 125(c) of the Trade Act of 1974 (''the 1974 Act'')(19 U.S.C. 2135(c)) provides that whenever the United States, acting in pursuance of any of its rights or obligations under any trade agreement entered into pursuant to the 1974 Act, modifies any obligation with respect to the trade of any foreign country or instrumentality, the President is authorized to proclaim increased duties or other import restrictions, to the extent, at such times, and for such periods as he deems necessary or appropriate, in order to exercise the rights or fulfill the obligations of the United States. Section 421 of the Uruguay Round Agreements Act (19 U.S.C. 2135 note) authorizes the President, pursuant to the 1974 Act, to proclaim an increase in any existing duty on certain tobacco to a rate no more than 50 percent above the rate that was set forth in rate column numbered 2 of the Tariff Schedules of the United States, as in effect on January 1, 1975, or no more than 350 percent ad valorem above the rate existing on January 1, 1975, whichever is higher.

(c) Section 1105(a) of the Omnibus Trade and Competitiveness Act of 1988 (''the 1988 Act'')(19 U.S.C. 2904(a)) provides that for purposes of applying section 125 of the 1974 Act, any trade agreement entered into under section 1102 of the 1988 Act (19 U.S.C. 2902) shall be treated as an agreement entered into under section 101 or 102, as appropriate, of the 1974 Act (19 U.S.C. 2111 and 2112), and any proclamation issued pursuant to such a trade agreement shall be treated as a proclamation issued pursuant to a trade agreement entered into under section 102 of the 1974 Act.

(d) The United States, acting pursuant to its rights and obligations under the Uruguay Round Agreements, in particular Article XXVIII of the GATT 1994, is modifying its obligations with respect to the tariff treatment of certain tobacco to establish a tariff-rate quota for imports of such tobacco.

(e) Accordingly, I have determined that it is appropriate to proclaim the tariff modifications set forth in Annex I to this proclamation in order to exercise the rights and fulfill the obligations of the United States under the Uruguay Round Agreements. These modifications would, among other things, establish a tariff-rate quota for imports of certain tobacco.

2. (a) Section 423 of the URAA (19 U.S.C. 3621) authorizes the President to proclaim the reduction or elimination of any duty with respect to cigar

binder and filler tobacco, wrapper tobacco, or oriental tobacco set forth in Schedule XX—United States of America, annexed to the Marrakesh Protocol to the GATT 1994 (''Schedule XX'').

(b) I have decided to proclaim the elimination of the duties on cigar binder and filler tobacco, wrapper tobacco, and oriental tobacco, as set forth in Annex I to this proclamation.

3. (a) Section 422(c) of the URAA (7 U.S.C. 1445 note) authorizes the President to waive the application to imported tobacco of section 106(g) of the Agricultural Act of 1949 (7 U.S.C. 1445(g)) if the President determines that the waiver is necessary or appropriate pursuant to an international agreement entered into by the United States.

(b) I have determined that it is necessary or appropriate pursuant to the Uruguay Round Agreements to waive the application of section 106(g) of the Agricultural Act of 1949 to imports of cigar tobacco. This waiver shall take effect on the effective date of this proclamation.

4. Presidential Proclamation No. 6641 of December 15, 1993, which implemented the North American Free Trade Agreement (''the NAFTA'') with respect to the United States, established a tariff heading in chapter 98 of the Harmonized Tariff Schedules of the United States (''the HTS'') for certain textile and apparel goods assembled in Mexico from fabric wholly formed and cut in the United States. This tariff heading, 9802.00.90, inadvertently narrowed the scope of the agreed duty-free treatment, as set forth in Appendix 2.4 to Annex 300–B to the NAFTA. I have decided that it is necessary and appropriate to modify heading 9802.00.90 to the HTS to align it with the provisions of the NAFTA, pursuant to section 201(a)(1) of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057)(19 U.S.C. 3331(a)(1)).

5. (a) The March 9, 1994, Memorandum of Understanding on the Results of the Uruguay Round Negotiations on Agriculture Between the United States of America and Uruguay and the March 24, 1994, Memorandum of Understanding on the Results of the Uruguay Round Market Access Negotiations on Agriculture Between the United States of America and Argentina (''the MOUs'') were submitted to the Congress along with the Uruguay Round Agreements. Each MOU provides that, once the appropriate Department of Agriculture authorities approve the country to ship fresh, chilled or frozen beef to the United States, the in-quota quantity of the United States tariff-rate quota for beef will be increased by 20,000 metric tons, and that increase will be allocated to that country.

(b) Section 404(d)(4) of the URAA (19 U.S.C. 3601(d)(4)) authorizes the President to proclaim an increase in the in-quota quantity of the tariff-rate quota for beef if the President determines that an increase is necessary to implement either MOU.

(c) Accordingly, pursuant to section 404(d)(4) of the URAA, I have determined that it is necessary to proclaim an increase in the in-quota quantity of the tariff-rate quota for beef as set forth in Annex II to this proclamation, to be effective for each country upon the dates specified therein.

6. Presidential Proclamation No. 6763 of December 23, 1994, implemented the Uruguay Round Agreements, including Schedule XX, with respect to the United States and incorporated in the HTS tariff modifications necessary and appropriate to carry out the Uruguay Round Agreements. Certain technical errors, including inadvertent omissions and typographical errors, were made in that proclamation. I have decided that, in order to reflect accurately the intended tariff treatment provided for in the Uruguay Round Agreements, it is necessary to modify certain provisions of the HTS, as set forth in Annex II to this proclamation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to section

301 of title 3, United States Code, section 125 of the 1974 Act (19 U.S.C. 2135), sections 421, 422(c) and 423 of the URAA (19 U.S.C. 2135 note, 7 U.S.C. 1445 note, and 19 U.S.C. 3621, respectively), and section 604 of the 1974 Act (19 U.S.C. 2483), do hereby proclaim:

(1) In order to exercise the rights and fulfill the obligations of the United States under the WTO Agreement, the HTS is modified as set forth in Annex I to this proclamation.

(2) The provisions of Annex I to this proclamation shall take effect with respect to articles entered, or withdrawn from warehouse, for consumption on or after the dates specified in such annex.

(3) Section 106(g) of the Agricultural Act of 1949 (7 U.S.C. 1445(g)) is waived with respect to imports of cigar tobacco entered, or withdrawn from warehouse, for consumption on or after the effective date of this proclamation.

(4) (a) In order to correct certain technical errors, to modify heading 9802.00.90, and to implement certain determinations concerning tariff-rate quotas for Argentina and Uruguay, the HTS is modified as set forth in Annex II to this proclamation.

(b) Annex I to Presidential Proclamation No. 6343 of September 28, 1991, is amended as set forth in Annex II to this proclamation.

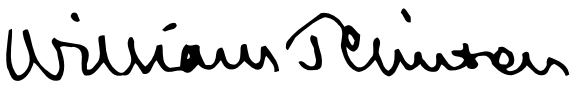
(c) The modifications made by Annex II to this proclamation shall be effective with respect to goods entered or withdrawn from warehouse for consumption on or after the dates specified in such annex.

(5) The United States Trade Representative and the Secretary of the Treasury are authorized to exercise my authority under the statutes cited in this proclamation to perform certain functions to implement this proclamation, as assigned to them in Annex I to this proclamation.

(6) All provisions of previous proclamations and Executive orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(7) This proclamation is effective on September 13, 1995.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of September, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.



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Annex I

Section A. Modifications to the Harmonized Tariff Schedule of the United States ("HTS").

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively.

Effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after the effective date of this proclamation.

(1)(a). The additional U.S. notes to chapter 24 are modified by inserting the following new additional U.S. notes in numerical sequence:

"5. (a) The aggregate quantity of tobacco entered, or withdrawn from warehouse, for consumption under subheadings 2401.10.63, 2401.20.33, 2401.20.85, 2401.30.33, 2401.30.35, 2401.30.37, 2403.10.60, 2403.91.45 and 2403.99.60 during the period from September 13 in any year to the following September 12, inclusive, shall not exceed the quantities specified below.

	Quantity (metric tons)
Argentina	12,000
Brazil	80,200
Chile	2,750
European Community (aggregate of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom)	10,000
Guatemala	8,500
Malawi	12,000
Philippines	3,000
Thailand	7,000
Zimbabwe	12,000
Other countries or areas	3,000

(b) Products of Canada, Israel or Mexico shall not be permitted or included under the aforementioned quantitative limitation and no such articles shall be classifiable in the subheadings of this note.

(c) The quantitative limitations under this note are subject to regulations as may be issued by the United States Trade Representative or its designated agency.

(d) Notwithstanding any other provision of this note, imports of tobacco, other than the product of Canada, Israel or Mexico, shall be eligible for the rates of duty provided in, and shall be classified in, the subheadings specified in paragraph (a) of this note, provided that the articles were (1) exported from the country of origin prior to September 13, 1995, and (2) imported directly from the country of origin into the customs territory of the United States, accompanied by such documentation as may be determined necessary by the Secretary of Treasury. For the purposes of this paragraph, entries of tobacco withdrawn from warehouse for consumption or entries of tobacco from foreign-trade zones shall not be determined to be imported directly from the country of origin into the customs territory of the United States.

6. For the purposes of this chapter, the term "prepared for marketing to the ultimate consumer in the identical form and package in which imported" means that the product is imported in packaging of such sizes and labeling as to be readily identifiable as being intended for retail sale to the ultimate consumer without any alteration in the form of the product or its packaging."

(b) Effective September 13, 1996, additional U.S. note 5 to chapter 24 of the HTS, as added by this paragraph, is modified by deleting paragraph (d) of such note.

Annex I (continued)
-2-

Section A. (con.)

(2). Subheadings 2401.10.40, 2401.10.60, 2401.10.70 and 2401.10.90, the superior text immediately preceding subheading 2401.10.40 and the superior text immediately preceding subheading 2401.10.70 are superseded by and the following provisions are inserted in numerical sequence:

	[Unmanufactured tobacco...:]				
	[Tobacco, not stemmed/stripped:]				
	[Not containing wrapper tobacco,...]				
	"Oriental or Turkish type:				
2401.10.44	Cigarette leaf.....	Free		77.2¢/kg
2401.10.48	Other.....	Free		85¢/kg
2401.10.53	Cigar binder and filler.....	Free		85¢/kg
	Other:			
	Flue-cured, burley and other light air-cured leaf:			
2401.10.61	To be used in products other than cigarettes.....	27.4¢/kg	Free (E,IL,J) 8.4¢/kg (CA) 22.4¢/kg (MX)	77.2¢/kg
	Other:			
2401.10.63	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.....	27.4¢/kg	Free (E,J)	77.2¢/kg
2401.10.65	Other.....	350%	Free (IL) 8.4¢/kg (CA) 22.4¢/kg (MX)	350%
2401.10.95	Other.....	37.5¢/kg	Free (A,E,IL, J,MX) 11.5¢/kg (CA)	85¢/kg"

(3)(a). Subheadings 2401.20.30, 2401.20.45 and 2401.20.55 and the superior text immediately preceding subheading 2401.20.45 are superseded and the following provisions are inserted in numerical sequence:

	[Unmanufactured tobacco...:]			
	[Tobacco, partly or wholly stemmed/stripped:]			
	[Not threshed or similarly...]			
	[Other:]			
	[Not containing wrapper tobacco, or not containing...:]			
	"Oriental or Turkish type:			
2401.20.23	Cigarette leaf.....	Free		$1.21/kg
2401.20.26	Other.....	Free		$1.15/kg
2401.20.29	Cigar binder and filler.....	Free		$1.15/kg
	Other:			
	Flue-cured, burley and other light air-cured leaf:			
2401.20.31	To be used in products other than cigarettes.....	46.9¢/kg	Free (E,IL,J) 14.4¢/kg (CA) 38.4¢/kg (MX)	$1.21/kg
	Other:			
2401.20.33	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions...	46.9¢/kg	Free (E,J)	$1.21/kg
2401.20.35	Other.....	350%	Free (IL) 14.4¢/kg (CA) 38.4¢/kg (MX)	350%
2401.20.57	Other.....	45.5¢/kg	Free (A*,E,IL, J,MX) 14¢/kg (CA)	$1.15/kg"

Annex I (continued)
-3-

Section A. (con.)

(3)(b). Conforming change: General note 4(d) is modified by deleting "2401.20.45 Indonesia" and "2401.20.55 Indonesia" and by inserting "2401.20.57 Indonesia" in numerical sequence.

(4). Subheading 2401.20.80 is superseded by:

	[Unmanufactured tobacco...:]			
	[Tobacco, partly or wholly stemmed/stripped:]			
	[Threshed or similarly processed:]			
	"Other:			
2401.20.75	Oriental or Turkish type.....	Free		$1.10/kg
	Other:			
2401.20.83	To be used in products other than cigarettes.....	43¢/kg	Free (E,IL,J) 13.2¢/kg (CA) 35.2¢/kg (MX)	$1.10/kg
	Other:			
2401.20.85	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.....	43¢/kg	Free (E,J)	$1.10/kg
2401.20.87	Other.....	350%	Free (IL) 13.2¢/kg (CA) 35.2¢/kg (MX)	350%"

(5). Subheadings 2401.30.30, 2401.30.60 and 2401.30.90 and the superior text immediately preceding subheading 2401.30.30 are superseded and the following provisions are inserted in numerical sequence:

	[Unmanufactured tobacco...:]			
	[Tobacco refuse:]			
	"From cigar leaf:			
	Tobacco stems:			
2401.30.03	Not cut, not ground and not pulverized.....	Free		Free
2401.30.06	Cut, ground or pulverized.....	Free		$1.21/kg
2401.30.09	Other.....	Free		77.2¢/kg
	From Oriental or Turkish type tobacco:			
	Tobacco stems:			
2401.30.13	Not cut, not ground and not pulverized.....	Free		Free
2401.30.16	Cut, ground or pulverized.....	Free		$1.21/kg
2401.30.19	Other.....	Free		77.2¢/kg
	Other:			
	To be used in products other than cigarettes:			
	Tobacco stems:			
2401.30.23	Not cut, not ground and not pulverized.....	Free		Free
2401.30.25	Cut, ground or pulverized.....	$1.17/kg	Free (E,IL,J) 36.3¢/kg (CA) 96.8¢/kg (MX)	$1.21/kg
2401.30.27	Other.....	34.3¢/kg	Free (E,IL,J) 10.6¢/kg (CA) 28.4¢/kg (MX)	77.2¢/kg

Annex I (continued)
-4-

Section A. (con.)

(5). (con.):

	[Unmanufactured tobacco...:]			
	[Tobacco refuse:]			
	Other (con.):			
	Other:			
	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions:			
	Tobacco stems:			
2401.30.33	Not cut, not ground and not pulverized.....	Free		Free
2401.30.35	Cut, ground or pulverized.....	$1.17/kg	Free (E,J)	$1.21/kg
2401.30.37	Other.....	34.3¢/kg	Free (E,J)	77.2¢/kg
2401.30.70	Other.....	350%	Free (CA,IL, MX)	350%"

(6). Subheading 2403.10.00 is superseded by:

	[Other manufactured tobacco and...:]			
"2403.10	Smoking tobacco, whether or not containing tobacco substitutes in any proportion:			
2403.10.20	Prepared for marketing to the ultimate consumer in the identical form and package in which imported.....	37.6¢/kg	Free (E,IL,J) 11.5¢/kg (CA) 30.8¢/kg (MX)	$1.21/kg
	Other:			
2403.10.30	To be used in products other than cigarettes.....	37.6¢/kg	Free (E,IL,J) 11.5¢/kg (CA) 30.8¢/kg (MX)	$1.21/kg
	Other:			
2403.10.60	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.....	37.6¢/kg	Free (E,J)	$1.21/kg
2403.10.90	Other.....	350%	Free (IL) 11.5¢/kg (CA) 30.8¢/kg (MX)	350%"

(7)(a). Subheading 2403.91.40 is superseded by:

	[Other manufactured tobacco and...:]			
	[Other:]			
	["Homogenized" or...:]			
	"Other:			
2403.91.43	To be used in products other than cigarettes.....	40.1¢/kg	Free (E,IL,J) 13.2¢/kg (CA) 35.2¢/kg (MX)	$1.10/kg
	Other:			
2403.91.45	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.....	40.1¢/kg	Free (E,J)	$1.10/kg
2403.91.47	Other.....	350%	Free (IL) 13.2¢/kg (CA) 35.2¢/kg (MX)	350%"

(b). Conforming change: The article description for subheading 9905.24.10 is modified by deleting "2403.91.40" and inserting "2403.91.43" in lieu thereof.

Annex I (continued)
-5-

Section A. (con.)

(8). Subheading 2403.99.00 is superseded by:

	[Other manufactured tobacco and...:]				
	[Other:]				
"2403.99	Other:				
2403.99.20	Prepared for marketing to the ultimate consumer in the identical form and package in which imported.....	36.3¢/kg	Free (E,IL,J) 11.5¢/kg (CA) 30.8¢/kg (MX)	$1.21/kg
	Other:			
2403.99.30	To be used in products other than cigarettes.....	36.3¢/kg	Free (E,IL,J) 11.5¢/kg (CA) 30.8¢/kg (MX)	$1.21/kg
	Other:			
2403.99.60	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.....	36.3¢/kg	Free (E,J)	$1.21/kg
2403.99.90	Other.....	350%	Free (IL) 11.5¢/kg (CA) 30.8¢/kg (MX)	350%"

Section B. Implementation of modifications in the Rates of Duty 1 General subcolumn of the HTS effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after September 13, 1995. For the following subheadings, the Rates of Duty 1 General subcolumn is modified by deleting the rate of duty appearing in such subcolumn and inserting the rate of duty "Free" in lieu thereof:

2401.10.21	2401.20.20
2401.10.29	2401.20.60

Section C. Effective September 13, 1995, general note 4(d) is modified by deleting "2401.10.21 Dominican Republic" and "2401.10.29 Honduras".

Section D. Modifications of the quantitative limitations provided for in additional U.S. note 5 to chapter 24.

On September 13 of each of the years in the following table, additional U.S. note 5 to chapter 24 shall be modified by deleting for such countries as listed below the country quantitative limitation in such note and inserting the appropriate quantitative limitation listed in this table for such year in lieu thereof:

	1996	1997	1998	1999
Additional U.S. note 5 to chapter 24:				
Argentina	12,000	12,000	11,000	10,750
Guatemala	8,875	9,250	9,625	10,000

Section E. Staged rate reductions in the Rates of Duty 1 General subcolumn of the HTS for subheadings modified in section A of Annex I to this proclamation.

For the following subheadings, the Rates of Duty 1 General subcolumn shall be modified on January 1 of each year by deleting the existing rate of duty and inserting in lieu thereof the rate of duty indicated in the table below for such year.

HTS Subheading	1996	1997	1998	1999	2000
2401.10.61	26.7¢/kg	26¢/kg	25.3¢/kg	24.6¢/kg	23.9¢/kg
2401.10.63	26.7¢/kg	26¢/kg	25.3¢/kg	24.6¢/kg	23.9¢/kg
2401.10.95	36.6¢/kg	35.6¢/kg	34.6¢/kg	33.7¢/kg	32.7¢/kg
2401.20.31	45.7¢/kg	44.5¢/kg	43.3¢/kg	42.1¢/kg	40.9¢/kg
2401.20.33	45.7¢/kg	44.5¢/kg	43.3¢/kg	42.1¢/kg	40.9¢/kg
2401.20.57	44.4¢/kg	43.2¢/kg	42¢/kg	40.9¢/kg	39.7¢/kg
2401.20.83	41.9¢/kg	40.8¢/kg	39.7¢/kg	38.6¢/kg	37.5¢/kg
2401.20.85	41.9¢/kg	40.8¢/kg	39.7¢/kg	38.6¢/kg	37.5¢/kg
2401.30.25	$1.13/kg	$1.09/kg	$1.05/kg	$1.01/kg	97¢/kg
2401.30.27	33.1¢/kg	32¢/kg	30.8¢/kg	29.6¢/kg	28.4¢/kg
2401.30.35	$1.13/kg	$1.09/kg	$1.05/kg	$1.01/kg	97¢/kg
2401.30.37	33.1¢/kg	32¢/kg	30.8¢/kg	29.6¢/kg	28.4¢/kg
2403.10.20	36.7¢/kg	35.7¢/kg	34.7¢/kg	33.8¢/kg	32.8¢/kg
2403.10.30	36.7¢/kg	35.7¢/kg	34.7¢/kg	33.8¢/kg	32.8¢/kg
2403.10.60	36.7¢/kg	35.7¢/kg	34.7¢/kg	33.8¢/kg	32.8¢/kg
2403.91.43	36¢/kg	32¢/kg	28¢/kg	23.9¢/kg	19.9¢/kg
2403.91.45	36¢/kg	32¢/kg	28¢/kg	23.9¢/kg	19.9¢/kg
2403.99.20	34¢/kg	31.7¢/kg	29.3¢/kg	27¢/kg	24.7¢/kg
2403.99.30	34¢/kg	31.7¢/kg	29.3¢/kg	27¢/kg	24.7¢/kg
2403.99.60	34¢/kg	31.7¢/kg	29.3¢/kg	27¢/kg	24.7¢/kg

Section F. Continuation of staged rate reductions in the Rates of Duty 1 Special subcolumn of the HTS for subheadings modified in section A of Annex I to this proclamation for goods of Canada under terms of general note 12 to the HTS.

For the following subheadings, the Rates of Duty 1 Special subcolumn shall be modified on January 1 of each year by deleting the existing rate of duty that is followed by the symbol "CA" and inserting in lieu thereof the rate of duty indicated in the table below for such year.

HTS Subheading	1996	1997	1998
2401.10.61	5.6¢/kg	2.8¢/kg	Free
2401.10.65	5.6¢/kg	2.8¢/kg	Free
2401.10.95	7.7¢/kg	3.8¢/kg	Free
2401.20.31	9.6¢/kg	4.8¢/kg	Free
2401.20.35	9.6¢/kg	4.8¢/kg	Free
2401.20.57	9.3¢/kg	4.6¢/kg	Free
2401.20.83	8.8¢/kg	4.4¢/kg	Free
2401.20.87	8.8¢/kg	4.4¢/kg	Free
2401.30.25	24.2¢/kg	12.1¢/kg	Free
2401.30.27	7.1¢/kg	3.5¢/kg	Free

Section F. (Con.)

HTS Subheading	1996	1997	1998
2403.10.20	7.7¢/kg	3.8¢/kg	Free
2403.10.30	7.7¢/kg	3.8¢/kg	Free
2403.10.90	7.7¢/kg	3.8¢/kg	Free
2403.91.43	8.8¢/kg	4.4¢/kg	Free
2403.91.47	8.8¢/kg	4.4¢/kg	Free
2403.99.20	7.7¢/kg	3.8¢/kg	Free
2403.99.30	7.7¢/kg	3.8¢/kg	Free
2403.99.90	7.7¢/kg	3.8¢/kg	Free

Section G. Continuation of staged rate reductions in the Rates of Duty 1 Special subcolumn of the HTS for subheadings modified in section A of Annex I to this proclamation for goods of Mexico under terms of general note 12 to the HTS.

For the following subheadings, the Rates of Duty 1 Special subcolumn shall be modified on January 1 of each year by deleting the existing rate of duty that is followed by the symbol "MX" and inserting in lieu thereof the rate of duty indicated in the table below for such year.

HTS Subheading	1996	1997	1998	1999	2000	2001	2002	2003
2401.10.61	19.6¢/kg	16.8¢/kg	14¢/kg	11.2¢/kg	8.4¢/kg	5.6¢/kg	2.8¢/kg	Free
2401.10.65	19.6¢/kg	16.8¢/kg	14¢/kg	11.2¢/kg	8.4¢/kg	5.6¢/kg	2.8¢/kg	Free
2401.20.31	33.6¢/kg	28.8¢/kg	24¢/kg	19.2¢/kg	14.4¢/kg	9.6¢/kg	4.8¢/kg	Free
2401.20.35	33.6¢/kg	28.8¢/kg	24¢/kg	19.2¢/kg	14.4¢/kg	9.6¢/kg	4.8¢/kg	Free
2401.20.83	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2401.20.87	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2401.30.25	84.7¢/kg	72.6¢/kg	60.5¢/kg	48.4¢/kg	36.3¢/kg	24.2¢/kg	12.1¢/kg	Free
2401.30.27	24.8¢/kg	21.3¢/kg	17.7¢/kg	14.2¢/kg	10.6¢/kg	7.1¢/kg	3.5¢/kg	Free
2403.10.20	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.10.30	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.10.90	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.91.43	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2403.91.47	30.8¢/kg	26.4¢/kg	22¢/kg	17.6¢/kg	13.2¢/kg	8.8¢/kg	4.4¢/kg	Free
2403.99.20	27¢/kg	23.1c/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.99.30	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free
2403.99.90	27¢/kg	23.1¢/kg	19.3¢/kg	15.4¢/kg	11.5¢/kg	7.7¢/kg	3.8¢/kg	Free

Annex II

Modifications to the Harmonized Tariff Schedule
of the United States (HTS)

Section A. Effective at 12:01 a.m. on January 1, 1994, heading 9802.00.90 is modified by deleting the word "which" appearing after "United States," and by inserting after "United States," the expression "provided that such fabric components, in whole or in part,".

Section B. Effective with respect to goods entered or withdrawn from warehouse for consumption on or after January 1, 1995.

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2", respectively.

(1) The Rates of Duty 1 Special subcolumn for subheading 2106.90.46 is modified by deleting the rate of duty "35.517¢/kg" preceding the symbol "MX" in parentheses and inserting in lieu thereof "35.517¢/kg of total sugars".

(2) The article description for subheading 2914.30.10 is modified by deleting "1-(2-naphthalenyl)ethanone; and" and inserting "1-(2-Naphthalenyl)ethanone; and" in lieu thereof.

(3) The article description for subheading 2924.21.12 is modified by deleting "1-(2-methylcyclohexyl)-3-phenylurea" and inserting "1-(2-Methylcyclohexyl)-3-phenylurea" in lieu thereof.

(4) The Rates of Duty 1 Special subcolumn for subheading 2924.21.16 is modified by inserting, in alphabetical order, the symbol "K" in the parentheses following the "Free" rate of duty in such subcolumn.

(5) The article description for subheading 2924.29.28 is modified by deleting "N-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide; and" and inserting "N-[[(4-Chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide; and" in lieu thereof.

(6) The article description for subheading 2925.19.70 is modified by deleting "N,N'-Ethylenebis(5,6-dibromo-2,3-norbornanedicarboximide" and inserting "N,N'-Ethylenebis(5,6-dibromo-2,3-norbornanedicarboximide)" in lieu thereof.

(7) The article description for subheading 2934.90.70 is modified by deleting "2-Methyl-4-isothiazolin-3-one;" from such description and by inserting in alphabetical sequence "2-Methyl-4-isothiazolin-3-one;" in the article description for subheading 2934.10.70.

(8) Subheading 2936.29.90 is superseded and the following provisions are inserted in numerical sequence:

	[Provitamins and vitamins, natural...:]		
	[Vitamins and their derivatives, unmixed:]		
	[Other vitamins and their...:]		
"2936.29.15	Niacin and niacinamide.....	Free	25%"
	[Other:]		
"2936.29.50	Other.....	Free	25%"

(9) The Rates of Duty 1 Special subcolumn for subheading 3926.90.65 is modified by deleting the rate of duty "3.3%" preceding the symbol "MX" in parentheses and inserting in lieu thereof "2.5%".

Section B. (con.)

(10) Additional U.S. note 9 to chapter 52 is modified by deleting the sentence "Imports from countries or areas who are not members of the World Trade Organization shall not be permitted or included in the quantitative limitations set forth in this note." and inserting in lieu thereof "Other than as provided for in the country allocations above, imports from countries or areas who are not members of the World Trade Organization shall not be permitted or included in the quantitative limitations set forth in this note.".

(11) The Rates of Duty 1 Special subcolumn for subheading 5402.41.90 is modified by deleting the rate of duty "8%" preceding the symbol "MX" in parentheses and inserting in lieu thereof "7.2%".

(12) The superior text preceding subheading 9817.00.92 which reads "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons:" is deleted and the text "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles:" is inserted in lieu thereof.

(13) Subchapter VI to chapter 99 is modified by deleting U.S. note 17.

Section C. Effective on the effective date of this proclamation:

Additional U.S. note 3 to chapter 2 is modified by:

(1) inserting in sequence "Argentina 20,000*" and "Uruguay 20,000*" after "Japan 200" in the list of countries and the quantities set opposite such countries in the note.

(2) inserting at the end of the note a new paragraph as follows:

> " * The quantity for Argentina or Uruguay shall be permitted entry pursuant to the provisions of this note on and after the date of publication by the Secretary of Agriculture of a notice in the Federal Register that Argentina or Uruguay has been granted approval by the Department of Agriculture to ship fresh, chilled or frozen beef to the United States. This paragraph and the "*" symbol following the quantity for Argentina and Uruguay shall be deleted from this note on the January 1 following the later date of the date of publication of the notice for Argentina or Uruguay.".

(3) deleting the paragraph inserted by subparagraph (2) above on the January 1 following the later date of the date of publication of the notice for Argentina or Uruguay.

Section D. Effective at 12:01 a.m. on January 1, 1996:

(1) Subchapter V to chapter 99 of the HTS is modified by deleting U.S. notes 2, 3, 4 and 5.

(2) Proclamation 6343 of September 28, 1991, is amended by deleting from Annex I thereof paragraph (d)(2) relating to subheading 9905.84.22.

Section E. For the following subheadings, the Rates of Duty 1 Special subcolumn shall be modified on January 1 of each year by deleting the existing rate of duty followed by the symbol "MX" in parentheses and inserting in lieu thereof the rate of duty indicated in the table below for such year.

HTS Subheading	1996	1997	1998	1999	2000	2001	2002	2003
2106.90.46	34.582¢/kg on total sugars	33.647¢/kg on total sugars	32.713¢/kg on total sugars	31.778¢/kg on total sugars	28.947¢/kg or total sugars	24.716¢/kg on total sugars	21.185¢/kg on total sugars	17.655¢/kg on total sugars 1/
3823.90.28	2.5¢/kg + 9.5%	2.2¢/kg + 8.1%	1.8¢/kg + 6.8%	1.4¢/kg + 5.4%	1.1¢/kg + 4%	0.7¢/kg + 2.7%	0.3¢/kg + 1.3%	Free
3926.90.65	1.6%	0.8%	Free	Free	Free	Free	Free	Free
5402.41.90	5.4%	3.6%	1.8%	Free	Free	Free	Free	Free
6216.00.26	7.2%	4.8%	2.4%	Free	Free	Free	Free	Free
7019.10.15	4.1%	2.7%	1.3%	Free	Free	Free	Free	Free
9906.08.11	19%	18.5%	18%	17.5%	17%	17%	17%	Free

1/ For subheading 2106.90.46, the rates of duty after 2003 shall be as follows:

Effective with respect to articles entered on or after January 1, 2004-- 14.124¢/kg on total sugars;
Effective with respect to articles entered on or after January 1, 2005-- 10.593¢/kg on total sugars;
Effective with respect to articles entered on or after January 1, 2006-- 7.062¢/kg on total sugars;
Effective with respect to articles entered on or after January 1, 2007-- 3.531¢/kg on total sugars; and
Effective with respect to articles entered on or after January 1, 2008-- Free

Section F. Effective at 12:01 a.m. on January 1, 1998:

(1) Chapter 58 of the HTS is modified by deleting the "(CA)" symbol and the duty rate preceding such symbol from additional U.S. notes 1, 2, 3, 4 and 5.

(2) The Rates of Duty 1 Special subcolumn:

(a) for subheading 5810.91.00 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 1" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

(b) for subheading 5810.92.10 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 2" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

(c) for subheading 5810.92.90 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 3" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

(d) for subheading 5810.99.10 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 4" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

(e) for subheading 5810.99.90 is modified by deleting the "CA" symbol in the parentheses following the duty rate "See additional U.S. note 5" and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "CA" in alphabetical order.

Annex II (continued)
-4-

Section G. Effective at 12:01 a.m. on January 1, 1999:

(1) Chapter 58 of the HTS is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol from additional U.S. notes 1, 4 and 5.

(2) The Rates of Duty 1 Special subcolumn for subheadings 5810.91.00, 5810.99.10 and 5810.99.90 is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "MX" in alphabetical order.

Section H. Effective at 12:01 a.m. on January 1, 2003:

(1) Chapter 58 of the HTS is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol from additional U.S. notes 2 and 3.

(2) The Rates of Duty 1 Special subcolumn for subheadings 0402.91.90, 0406.90.32 and 1806.20.94 is modified by deleting the duty rate preceding the "(MX)" symbol and inserting the "Free" rate in lieu thereof.

(3) The Rates of Duty 1 Special subcolumn for subheadings 2106.90.52, 2106.90.54, 5810.92.10 and 5810.92.90 is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "MX" in alphabetical order.

Section I. Effective at 12:01 a.m. on August 1, 2003, the Rates of Duty 1 Special subcolumn for subheading 0709.60.20 is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "MX" in alphabetical order.

Section J. Effective at 12:01 a.m. on January 1, 2006, the Rates of Duty 1 Special subcolumn for subheadings 1701.11.50, 1701.12.50, 1701.91.30 and 1701.99.50 is modified by deleting the duty rate preceding the "(MX)" symbol and inserting in lieu thereof "7.062¢/kg less 0.1¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 4.564¢/kg".

Section K. Effective at 12:01 a.m. on January 1, 2008, the Rates of Duty 1 Special subcolumn for subheading 2106.90.48 is modified by deleting the "(MX)" symbol and the duty rate preceding such symbol and inserting in the parentheses following the "Free" rate in such subcolumn the symbol "MX" in alphabetical order.

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FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

45647–46016.....1
46017–46212.....5
46213–46496.....6
46497–46748.....7
46749–47038.....8
47039–47264.....11
47265–47452.....12
47453–47676.....13

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6819.....47449
6820.....47551
6821.....47663

Administrative Orders:
No. 95–41 of September 8, 1995.....47659

5 CFR

Ch. LX.....47240
300.....47039
304.....45647
353.....45670
430.....47646
432.....47646
451.....47646
531.....47646
532.....46213
550.....47039
591.....46749
752.....47039
771.....47039
831.....47039
842.....47039
870.....45670
890.....45670
1320.....45776, 46148
4101.....47453

Proposed Rules:
300.....46780
2640.....47208

7 CFR

6.....47453
51.....46976
271.....45990
272.....45990
273.....45990
945.....46017
998.....46750
1137.....46214
1942.....46215
1951.....46753

Proposed Rules:
17.....47495
319.....47101
1005.....47495
1006.....47495
1007.....47495
1011.....47495
1012.....47495
1013.....47495
1046.....47495
1260.....46781

8 CFR

329.....45658

9 CFR

Proposed Rules:
1.....46783
3.....46783

10 CFR

73.....46497

Proposed Rules:
30.....46784
40.....46784
50.....47314
52.....47314
70.....46784
100.....47314
430.....47497
830.....47498
834.....47498

12 CFR

3.....46170, 47455
208.....46170
225.....46170
325.....46170
601.....47453

Proposed Rules:
2.....47498
23.....46246
613.....47103
614.....47103
618.....47103
619.....47103
626.....47103

13 CFR

Proposed Rules:
108.....46789

14 CFR

25.....47458
39.....46216, 46758, 46760, 46761, 46763, 46765, 47265, 47465
71.....47266
97.....46218
399.....46018

Proposed Rules:
39.....45683, 46541, 46542, 46544, 46790, 46792, 47314, 47501
71.....46547, 47503

15 CFR

275.....45659

16 CFR

600.....45659

17 CFR

201.....46498
270.....47041
274.....47041

19 CFR

10.....46188, 46334
12.....46188, 46334, 47466